

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5518 OF 2018

(SMT. LEELABAI AJABRAO IWANATE & OTH...VS.. SMT. KAMLABAI PANJABRAO IWANATE)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.G.Puranik, Advocate for Petitioners.
None for the respondent.

CORAM : ANIL S. KILOR, J.
DATED : FEBRUARY 21, 2023.

1. Order dated 13/08/2018 passed below Exh.1 by the learned District Judge-9, Nagpur in M.C.A. No.633 of 2017, rejecting the application for condonation of delay is under challenge in the present writ petition.

2. The facts in brief, of the present case, are as under:

The respondent filed a suit for declaration, partition and separate possession, which was decreed vide judgment and decree dated 27/07/2016. The said judgment and order was carried in appeal, however, there was a delay of 354 days and therefore, an application for condonation of the delay was filed along with the appeal. The same came to be dismissed vide impugned order.

3. Heard learned counsel for the petitioners.
None for the respondent though served.

4. The learned counsel for the petitioners points out that though a specific ground was raised as regards the financial condition of the petitioner and it was pointed out that the petitioners were not in a position to arrange the court fees, the delay was caused. It is pointed out that in addition to this, there is one more reason which was mentioned in the application, whereby it was pointed out that even intimation was not given by the learned counsel.

5. It is submitted that the first reason about financial condition was not at all considered by the learned trial Court and only on the ground of knowledge, the Court has rejected the application. It is submitted that the judgments cited by the petitioners were not considered in proper perspective and he therefore, submits that the impugned order is illegal and bad in law.

6. I have perused the writ petition, accompanying documents and the impugned order.

7. Admittedly, in the present matter, the suit, which was decreed against the petitioners, was for declaration, partition and separate possession. Further, it is an admitted fact that the respondent did not appear before the learned first appellate Court opposing the application or disputing the facts stated in the application for condonation of delay. Thus, the explanation given by the petitioners for causing the delay namely their financial condition and lack of knowledge about the decree passed

against them, have gone uncontroverted. Even before this Court, though the respondent is served, none appeared and rebutted the case of the petitioners.

8. In the circumstances, considering the law laid down by the Hon'ble Supreme Court of India in the case of *Esha Bhattacharjee ..vs.. Managing Committee of Raghunathpur Nafar Academy & oth.*, reported in **(2013) 12 SCC 649**, I am of the considered view that the learned trial Court has committed error in not adopting liberal and pragmatic approach in this case. It is apparent on the face of the order that no observations have been made on the uncontroverted facts stated in the application as regards the financial condition of the petitioner and the time consumed by them to arrange the court fees amount. In that view of the matter, I pass the following order:

- i) The Writ Petition is allowed.
- ii) The impugned order dated 13/08/2018, passed by District Judge-9, Nagpur in M.C.A. No.633 of 2017 is hereby quashed and set aside.
- iii) The Civil Application Exh.1 is allowed. The delay caused in filing the appeal is condoned.

The Writ Petition is **disposed of** accordingly.
No order as to costs.

JUDGE