



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

12 WRIT PETITION NO. 6549 OF 2024

GYANOJI JAKKOJI BALAPURE THROUGH GPA RAJESH GANGADHAR
SURYAWANSHI

VERSUS

GANGADHAR ATMARAM SONAR AND ANOTHER

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Mr. Bhavthankar Vivek Vasantrao, Advocate for the Petitioner

CORAM : Y. G. KHOBRAGADE, J.

DATE : 23rd September, 2024

ORDER:

1. Heard Shri Bhavthankar, the learned Advocate appearing for the Petitioner at length.
2. By the present Petition, the Petitioner has challenged the judgment and order dated 09.09.2021 passed by the learned Civil Judge, Senior Division, Biloli in Cri.M.A. No.57 of 2017, thereby rejected the application for condonation of delay in filing application for restoration of Regular Civil Suit No. 7 of 1996, which came to be dismissed on 26.02.1998 for want of prosecution.
3. Needless to state that the Petitioner had filed RCS No.7 of 1996 for declaration of ownership and perpetual injunction. However, said suit came to be dismissed for want of prosecution on 26.02.1998. After lapse of 19 years six months and 11 days, the Petitioner filed an application for restoration of the suit alongwith application for

condonation of delay in filing the application for restoration. The Petitioner contended that he was suffering from mental illness, hence, prayed for condonation of delay. On 09.09.2021, the learned trial Court passed the impugned order holding that the Petitioner failed to produce any evidence to show that he was suffering from mental illness but at the same time, the Petitioner was prosecuting other legal proceedings in the Court of law. Therefore, the learned Trial Court declined to condone the delay.

4. The learned counsel for the Petitioner submits that the Petitioner was suffering from mental illness and he was not understanding anything and, therefore, the Petitioner was taking Ayurvedic treatment from the private Ayurvedic Medical Practitioner. However, on perusal of the impugned order, it appears that the plaintiff himself produced certain documents below Exh. 32 in RCS No.36 of 2008 before the CJJD Naigaon, which is decided on 17.04.2012. Being aggrieved by the said Judgment and Decree, the Petitioner preferred Regular Civil Appeal No. 26 of 2012. In cross examination, the Petitioner admitted that, in the year 2008, he instituted civil suit before the Civil Court, Naigaon in respect the subject matter of the property but since 2008 he was suffering from mental illness and did not produce any medical case paper.

5. In *Pathupati Subba Reddy Vs. The Special Deputy Collector (LA)*, [2024]4 SCR 241, the Hon'ble Supreme Court held that where a

case is brought before the Court beyond the period of limitation, the applicant has to explain to the Court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. Even after the 'sufficient cause' is established, the Court has discretion to decide whether to allow or dismiss the application for condonation of delay upon the bonafides of the party. The discretion will not be exercised by the Court when the delay is caused by negligence, inaction or lack of bonafides.

6. In the case in hand, though the suit of the plaintiff/Petitioner was dismissed on 26.02.1998, but he kept mum for a considerable period and filed the application for restoration of the suit alongwith application for condonation of delay after laps of more than 19 years, without sufficiently explaining the delay. Needless to say that, though the Petitioner claimed that he was suffering from mental illness, but at the same time the petitioner was prosecuting other proceeding in the court of law and no medical evidence produced to prove that he was suffering from mental illness for more than 19 years. The learned trial court passed the impugned order, holding that, the petitioner was aware about court proceeding and he contested his right, hence, the delay is not justified. Therefore, I do not find that the impugned order passed by the learned trial court suffers illegality, hence, no interference is called at the hands of this court.

7. In view of the above discussion, I do not find any substance to interfere with the findings recorded by the Trial Court. Hence the Petition is dismissed. No order as to costs.

(Y. G. KHOBRADE, J.)

JPChavan