

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7748 OF 2022

Bharat Dashrath Nikam and Anr.	.. Petitioners
Versus	
Sahebrao Pundlik Aher	.. Respondent

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- Mr. Mufeez Ansari i/by Mr. Jayendra D. Khairnar, Advocate for Petitioners.
 - Mr. Shailesh Kharat, Advocate for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 02, 2024.

P.C.:

- 1.** Heard Mr. Ansari, learned Advocate for Petitioners and Mr. Kharat, learned Advocate for Respondent.
- 2.** After hearing the learned Advocates appearing for the parties on 23.01.2024, the following order was passed:-

"1. Heard Mr. Khairnar, learned Advocate for Petitioner and Mr. Babar, learned Advocate for Respondent.

2. Perused the impugned order dated 30.03.2017, which is at Exhibit-A, page No.10 of the Writ Petition.

3. Application filed for seeking condonation of delay in filing restitution Application under Order IX Rule 4 of the Civil Procedure Code, 1906 came to be dismissed.

4. Incidentally, the learned Trial Court has appreciated the evidence placed on record by the Applicant on medical grounds of himself and the learned Advocate appearing for the Applicant.

5. That apart, it is pleaded that Applicant No.2, the sister of Applicant No.1 is an illiterate lady and due to her family responsibility did not attend the date on which original

suit was listed before the Trial Court. It was pleaded that the delay caused of approximately five months was not deliberate. That apart, there was evidence which was brought on record during the course of examination of the pendency of suit during the contentious period about the husband of the Applicant No.2 being suffering from allergic asthma and being bed-ridden for two to three months.

6. In this aforesaid background, the learned Trial Court held that there is no medical certificate placed on record which would enable the party to prove that there was indeed a medical ailment. The Application seeking condonation of delay did not mention the grounds, however Application seeking restoration did mention the aforesaid grounds. Hence learned Trial Court has held that delay has not been explained and mentioned in the Application seeking condonation of delay and therefore it is found that there is no reason the condone the delay.

7. Prima facie, I am of the opinion that the impugned order dated 30.03.2017 passed in the facts and circumstances is extremely harsh and deserves to be set aside. I am inclined to accept the reasons for condoning the delay of 5 months. However learned Advocate Mr. Babar would submit that Advocate Mr. Shailesh Kharat appears for the Respondent. Hence he would submit that this Court be pleased to place the matter next week for passing any further orders.

8. At request of Mr. Babar, stand over to 30th January, 2024. To be placed under the caption 'for orders'."

3. Mr. Kharat would make two-fold submissions. He has drawn my attention to the Application seeking restitution which is at page No.24 of the Writ Petition and would submit that adequate reasons as also the averments have not been made in the Application. I have perused the said Application and I find that the reasons stated in paragraph No.4 by the Applicant who is a woman and mother are adequate and deserve to be considered.

4. Next he would submit that the Application having been considered by the learned Trial Court, the impugned order be

sustained. In that regard, I am of the opinion that the Applicants i.e. Petitioners before me cannot be non-suited and in view the Application made as also the reasons stated thereunder, I am inclined to set aside the impugned order and allow the Application filed for seeking condonation of delay for filing the Restitution Application under Order IX Rule 4 of the Code of Civil Procedure, 1908.

5. Needless to state that in view of the fact that the original Suit was filed in the year 2015 and has remained pending on the record and file of the learned Trial Court for the past 9 years, the Writ Petitioners are therefore directed to pay costs of Rs.1,000/- for the delay to the Respondent, which shall be paid within a period of three weeks from today. Receipt of payment of costs shall be placed on record before the learned Trial Court.

6. In view of the above observations and directions, delay stands condoned and the learned Trial Court is directed to hear the Restitution Application as expeditiously as possible and within a period of 6 weeks from today and pass a reasoned order in accordance with law.

7. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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