



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

WRIT PETITION NO.1387 OF 2019

Vijay s/o Ramsingh Thakur

..vs..

Sau. Sarita w/o Prabhudas Raurale and anr.

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

Court's or Judge's orders

Shri N.R. Tekade, Advocate for the petitioner.

CORAM: MRS.VRUSHALI V. JOSHI, J.

DATED : 29/02/2024.

By this petition, the petitioner has challenged the order dated 12.10.2018 passed by the District Judge, Akola rejecting the application for condonation of delay in filing the appeal.

2. The petitioner is the original defendant. The respondent/plaintiff has filed a Regular Civil Suit no.661 of 2012 against the petitioner for permanent injunction. The wife of the petitioner was also made a party as defendant no.2. There was dispute between the petitioner and his wife. The plaintiff has appeared in the said suit and filed his written statement and thereafter, he went to Nashik for his labour work. Before that he met with an Advocate and the Advocate assured him that he will look-after the proceedings before the Trial Court, however the Advocate has not appeared in the matter before the Trial Court and the Trial Court has passed the order of no cross no evidence and without affording an opportunity to the petitioner, the decree was passed in favour of the respondent no.1. When the respondent no.1 came to execute the decree by taking possession of the

room, the petitioner came to know about the decree and thereafter, he rushed to the Advocate and then he applied for certified copy. After obtaining certified copy, he has filed an application for condonation of delay of 460 days in filing the appeal.

3. The District Court after considering the reasons for the delay as non-satisfactory, rejected the application for condonation of delay. Being aggrieved by the said order, the petitioner is before this Court.

4. On earlier date none present for the respondents. Today also despite second call at 2.30 p.m., none appeared for the respondents, therefore, I heard the petitioner as the matter is of the year 2019.

5. It is the contention of the petitioner that he is a poor labourer. At the relevant time he was not in town and there was some dispute in between the petitioner and his wife and therefore, the wife/respondent no.1 did not inform about the non-appearance of the petitioner's advocate in the Trial Court. It is also submitted that he was not aware about the Decree which was passed without hearing the petitioner and therefore, he has filed application for condonation of delay bearing M.J.C. No.32 of 2018 before the District Judge, Akola, which has been rejected.

6. Considering the reasons given by the petitioner, an opportunity is required to be given to the petitioner to contest the matter as the delay is not deliberate, hence the following order :

7. The Writ Petition is allowed. I hereby condone the delay in filing the appeal challenging the judgment and decree dated 24.10.2016 passed by the 6th Joint Civil Judge, Junior Division, Akola in R.C.S. No.661 of 2012.

8. The Writ Petition stands disposed of accordingly.

(MRS. VRUSHALI V. JOSHI, J.)

Trupti