



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 7039 of 2019

Assistant Regional Transport Officer, (A.R.T.O.) Gondia, Distt. Gondia ..vs.. Narmadadevi w/o Mahadeo Jaiswal (deleted), Amratlal s/o Mahadeo Jaiswal and ors.]

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

Court's or Judge's orders

Mr. S. B. Bissa, AGP for the petitioner

CORAM : ANIL L. PANSARE J.

DATED : 01-07-2024

The challenge is to the order dated 17-6-2013 passed by learned Civil Judge Senior Division, Gondia in Regular Miscellaneous Judicial Case No. 11/2010.

2. The petitioner - Assistant Regional Transport Officer, Gondia had filed application seeking condonation of delay of about one year nine months and five days in filing application to set aside the order dated 7-12-2009 of dismissal of R.C.S. No. 48/2000.

3. Heard learned Assistant Government Pleader for the petitioner.

4. None appears for the respondents though served.

5. It appears that the petitioner had filed civil suit seeking declaration of ownership of the disputed property on the ground, inter alia, that the respondents – defendants have encroached upon the land allotted to the Regional Transport Office, Gondia by the Collector. The suit came to be dismissed in default vide order dated 7-12-2009. It appears from the application filed by the

petitioner before the trial Court that the petitioner had applied for certified copy on 8-12-2009 and received the same on 16-12-2009. The application seeking to condone delay however was filed on 21-10-2011. The reason for delay as explained by the petitioner was that the officer, who had obtained the certified copy, was transferred and in the year 2010, the charge was given to the present petitioner. He was not aware of the order so passed by the trial Court and upon getting knowledge, he immediately filed application.

6. Having gone through the impugned order, I do not find any reason assigned by the trial Court to not accept the justification given by the petitioner for approaching the Court belatedly. No reasons are assigned by the trial Court as to why the petitioner should not be believed. The trial Court has observed that despite obtaining certified copy on 16-12-2009, no steps were taken by the applicant for restoration of suit and, therefore, the element of diligence is absent.

7. In my view, the finding is erroneous in as much as the petitioner has come up with a case that the officer then working was transferred and the charge was given to the petitioner in the year 2010. He was unaware of the order of dismissal passed in the suit. He further stated on affidavit that on getting knowledge, he has filed petition. In that sense, the petitioner had assigned sufficient cause for approaching the Court belatedly. It is well settled that while considering applications for condonation of delay, particularly for restoration of suit, the Court should be lenient. This is not to suggest that the Court should accept

the applications whether or not reasons are assigned. However, one would definitely expect to consider the reasons assigned and the plea put forth by the petitioner-applicant. The trial Court failed to do so.

8. In view of the above, order impugned is unsustainable and the same is quashed and set aside. The application filed by the petitioner seeking to condone delay is allowed.

9. The suit viz. R.C.S. No. 48 /2000 is restored on the file of Civil Judge Senior Division, Gondia.

10. Learned trial Court shall re-issue notices to the defendants and proceeded to take steps for disposal of suit in accordance with law.

11. The petitioner shall appear before the trial Court on 29-7-2024.

(Anil L. Pansare, J.)