



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

WRIT PETITION NO.3648/2023

Bhimrao Ganpat Petkar and anr. .Vs. Raju alias Rajkumar Ganpat Petkar 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. R. Kadu, Advocate for petitioners.

Mr. A. A. Dhawas, Advocate for respondent Nos. 2, 3 and 5.

CORAM : ANIL L. PANSARE, J.

DATE : NOVEMBER 21, 2024

Heard.

On 19.10.2024, following order was passed.

“Heard Mr. Kadu, learned counsel for the petitioners and Mr. Dhawas, learned counsel for the respondent Nos.2,3, and 5.

*2. The petition questions the order dated 20/4/2023 by which the application for condonation of delay of 20 days caused in filing application for restoration of Regular Civil Suit No. 17/2021 which came to be dismissed on 21/4/2022 on account of the absence of the petitioners and their counsel has been rejected. Mr. Dhawas, learned counsel for the respondent Nos. 2, 3 and 5 opposes the same on the ground that the delay is almost 30 days. Whatever be the case, the delay is not of such a magnitude so as to oust the petitioners/plaintiffs from the course of law, In view of what has been held in ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others (2013) 12 SCC 649***, which holds that a liberal approach in regard to consideration of an application for condonation of delay has to be adopted, with a view that the rights claimed by the parties are not defeated. Mr. Kadu, learned counsel for the petitioners, upon instructions, makes a statement that the petitioners are willing to compensate the*

other side for any inconvenience which is caused to them for which he is ready to deposit costs of Rs.5000/-, considering which, issue notice for final disposal to the respondent Nos.1 and 4, returnable on 30th October, 2023.

3. The petitioners shall serve the respondent Nos. 1 and 4 by all modes permissible in law, till the returnable date. By the returnable date, the costs of Rs.5000/- be deposited in this Court.”

Having heard both sides and having gone through the record, since the delay is trivial and since the respondents have been compensated, the petition is disposed of in terms of order dated 19.10.2023. Impugned order dated 20.04.2023 passed by 3rd Jt. Civil Judge Junior Division, Warora in M.J.C.No.79/2022 is quashed and set aside. Costs of Rs.5,000/- deposited by the petitioners be paid to respondent Nos. 2, 3 and 5.

(Anil L. Pansare, J.)