



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

WRIT PETITION NO.4937/2023

Manish Ashokrao Sawarbandhe and anr. .Vs. Kishor Laxman Chahare

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

Court's or Judge's orders

Mr. H. M. Bobade, Advocate for petitioners.
Ms. S. J. Banerjee, Advocate for respondent.

CORAM : **ANIL L. PANSARE, J.**

DATE : **06.08.2024**

The petitioners-original plaintiffs have taken exception to order dated 04.02.2023 passed by 2nd Jt. Civil Judge Junior Division, Wardha in M.J.C.No. 252/2019.

Having heard both sides and having gone through the record, it transpires that the petitioners (original plaintiffs) had filed suit bearing Special Civil Suit No.81/2014 against the respondent-defendant. The suit was fixed for evidence but none appeared on behalf of the petitioners. Accordingly, the suit was listed for dismissal on 07.03.2019. None appeared for the petitioners on that day as well. The Trial Court, therefore, dismissed the suit for want of prosecution.

The petitioners on 24.04.2019, filed application i.e. M.J.C.No.52/2019 seeking to condone the delay and to restore the suit on record. The petitioners came up with a case that the petitioner No.1 was seriously ill at the relevant time and, therefore, could not attend the Court. The Trial Court has observed that the petitioner No.1 did not place on record any document in support nor did he enter the witness box to justify the delay. Most importantly, the Trial Court has held and rightly

so that the petitioner No.2 was available to prosecute the suit and nothing has been mentioned as regards his absence.

The Trial Court then noticed that the matter was kept pending for evidence of petitioners from 04.07.2018 onwards and ultimately the Trial Court was left with no other alternative but to dismiss the suit on 07.03.2019 for continuous absence of the petitioners.

Thus, it appears that the petitioner No.1's absence has been not justified by filing medical certificate. So far as the petitioner No.2 is concerned, there is absolutely nothing as to why could not he prosecute the suit at the relevant time.

I do not find any error in the order passed by the Trial Court. There is no merit in the petition. It is accordingly dismissed. No order as to costs.

(Anil L. Pansare, J.)

Kahale