



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

Writ Petition No. 7010 of 2023

[Sou. Anjan W/o Vishnu Katkar and ors. Vs. Sou. Babytai W/o Datta Jagtap 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. N. D. Borkar, Advocate for the petitioners

CORAM : ANIL L. PANSARE J.

DATED : 26-11-2024

On 14-11-2024, following order was passed.

“The petitioners – original defendants have come up with a case that the application filed by them under Section 5 of the Limitation Act, 1963 has been dismissed by the first appellate Court without considering the correct status of the fact.

The order impugned, however, indicates that the petitioners came up with a theory that in the year 2014, the matter was amicably settled between the parties and, therefore, they did not appear before the trial Court but then it was found by the first appellate Court that Advocate for the petitioners not only appeared before the trial Court after the year 2014 but has filed application seeking adjournment as well. Accordingly, the appellate Court held that the petitioners have raised a false plea and dismissed the application.

Learned counsel for the petitioners submits that the petitioners were unaware of what Advocate has done before the trial Court. She further submits that the fact remains that the petitioners never appeared before the trial Court subsequent to year 2014.

If what has been stated above is correct, the petitioners ought to have explained as to whether they enquired with the Advocate as to why did he appear despite matter having been settled and why did he seek adjournment when there was no such necessity. The petitioners have not explained this vital fact as noted by the first appellate Court.

Learned counsel for the petitioners seeks time to take instructions on this point. Time granted with a caution that any attempt, if made to misled the Court, the petitioners will suffer serious consequences.

Stand over to 25-11-2024.”

2. Learned counsel for the petitioners submits that except for oral instructions from his clients, he has nothing to show that any communication was made with the Advocate, who appeared before the trial Court for his appearance as noted in the proceedings before the first appellate Court.

3. Thus, it is evident that the petitioners made an attempt to obtain an order by making incorrect statement that petitioners never appeared before the trial Court subsequent to the year 2014. There is no merit in the petition. The petition is dismissed.

(Anil L. Pansare, J.)