



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

Writ Petition No.750 of 2024

KISHOR NILKANTH BHENDE AND OTHERS

VS

SMT. MANDA DEEPAK BHENDE AND ANOTHER

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Deoul Pathak, Advocate for the Petitioner/s

CORAM : ANIL S. KILOR, J.

DATED : 07.02.2024

1. Heard.
2. The order dated 22.08.2023, condoning the delay of 1 month and 18 days in filing the application for setting aside the *ex parte* decree passed in Regular Civil Suit No.31 of 2012, is under challenge in this petition.
3. The only ground argued by the learned counsel for the petitioners is that, the application for setting aside the *ex parte* decree itself is not maintainable and therefore, the trial Court has committed error in allowing the application for condonation of delay.
4. It is submitted that while deciding the application for condonation of delay, the trial Court can go into the merits of the matter, which the trial Court has failed to do so in this case.
5. In light of the submission of the learned counsel for the petitioners, I have perused the application, and on perusal, it is revealed that no such ground was raised while opposing the

application for condonation of delay. The learned trial Court, therefore, had no occasion to look into the merits of the matter and to examine, whether the application for setting aside an *ex parte* decree is maintainable or not.

6. In the circumstances, for the ground, which was not raised and argued before the trial Court, the order of the trial Court cannot be faulted with.

7. Accordingly, I do not find any error committed by the learned trial Court in allowing the application for condonation of delay. Hence, the petition is **dismissed**.

8. At this stage, the learned counsel for the petitioners, prays for direction to the learned trial Court to decide the application expeditiously as regards objection about the maintainability, if any, filed by the petitioners.

9. I am of the opinion that, it would be appropriate for the petitioners to make such request to the learned trial Court after filing such application, which the trial Court may consider.

[ANIL S. KILOR, J.]