



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 378 OF 2019

- 1] Faiz Ahmad Biyabani s/o Nazeer Ahmad Biyabani,
aged about 33 years, Occ. Business,
R/o Maulana Azad Ward, Gadchandur Road,
Tahsil – Rajura, District – Chandrapur.
- 2] Asif Ahmad Biyabani s/o Nazeer Ahmad Biyabani,
aged about 53 years, Occ. Business,
R/o Plot No. 5-A, Outside Delhi Gate,
Opposite Himayat Bang, Harsal Road,
Aurangabad.

...PETITIONERS

Versus

- 1] Eknath s/o Ganpat Gargelwar,
(dead – through Lrs)
- 1A] Mangala Eknath Gargelwar,
aged about 63 years, Occ. Housewife.
- 1B] Nilesh Eknath Gargelwar,
aged about 41 years, Occ. Private.
- 1C] Vaishali Vijay Modakwar,
aged about 43 years, Occ. Housewife.
- 1D] Priti Yogesh Durshalwar,
aged about 38 years, Occ. Housewife.
- 1E] Anu Eknath Gargelwar,
aged about 32 years, Occ. Housewife.

All are R/o Jawahar Nagar, Ward No.15,
Rajura, District – Chandrapur.

- 2] Baliram s/o Wasudeo Bobade,
aged Major, Occ. Service.

- 3] Suresh s/o Wasudeo Bobade,
aged Major, Occ. Service.
- 4] Pravin s/o Maroti Upare,
aged Major, Occ. Business.
- 5] Wasudeo s/o Bajirao Galgelwasr,
aged Major, Occ. Service.

Respondent nos. 2 to 5 are R/o Jawahar Nagar,
Ward No.15, Rajura, Tahsil – Rajura,
District – Chandrapur.

...RESPONDENTS

Shri Rohit Joshi, Counsel for the petitioners.
Shri A.A. Dhawas, Counsel for the respondents.

CORAM : ANIL L. PANSARE, J.
DATE : JUNE 10, 2024

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally
by consent of the learned Counsel for the parties.

2] The challenge is to order dated 13/11/2018 passed
by the learned Civil Judge Junior Division, Rajura, rejecting the
request to condone delay in filing review application against
the order dated 24/4/2018 passed below Exh. 76 directing the
petitioners – plaintiffs to produce documents.

3] The learned trial Court has rejected the application on the ground that in the prayer clause, the petitioners have not disclosed period of delay. The Court found that there is delay of 64 days in filing application and that each day's delay is not explained, nor is there proper justification for the delay.

4] The learned Counsel for the petitioners has invited my attention to the application seeking condonation of delay. The grounds put forth by the petitioners were that they were in dilemma whether to approach Counsel at Nagpur to challenge the order. The Counsel at Nagpur has kept brief with him for a long time and thereafter advised the petitioners to challenge the order by filing application seeking condonation of delay. Accordingly, the application was filed.

5] Thus, it appears that the petitioners were in dilemma whether to approach Counsel at Nagpur. The petitioners are residents of Tahsil – Rajura, District – Chandrapur. Ultimately, they appears to have approached the Counsel at Nagpur, who kept brief with him for a long time and

thereafter advised the petitioners to challenge the order. Thus, the delay is attributed to the time taken by the Counsel at Nagpur to give his opinion.

6] I have gone through the application, which is not happily worded, in the sense, that minute details are not provided, nor had the petitioners mentioned number of days to be condoned. As such, the Counsel appearing for the petitioners before the trial Court ought to be careful in filing application. However, there is perception in minds of Counsels that application seeking condonation of delay is usually considered liberally and, therefore, in many cases, they do not not carefully draft the application. Present application is one of such circumstance.

7] Nonetheless, the petitioners have, on oath, stated that they were in dilemma whether to approach Counsel at Nagpur and thereafter the Counsel appears to have kept brief for a long time to give his opinion. In that sense, the petitioners have given sufficient cause for not approaching the trial Court

within the stipulated time.

8] At this stage, the learned Counsel for the respondents submits that for the casual drafting, costs be imposed.

9] In view of above, the order impugned is quashed and set aside. The application (Exh. 79) is allowed subject to costs of Rs.5,000/- (rupees five thousand) to be paid to the respondents – defendants within one month from today. Delay in filing review application is accordingly condoned.

10] Rule is made absolute of in above terms.

JUDGE

Sumit