



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

WRIT PETITION NO. 314 OF 2025

Jitendra Wasudeorao Harode

Vs.

Dharamdas S/o Melumal Ramani and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. Sudheer Voditel, Advocate instructed by Mr. N.R.
Kanungo, Advocate for petitioner.

CORAM : ANIL L. PANSARE, J.

DATE : 20.01.2025.

Heard.

2. The challenge is to the order dated 20.09.2024 passed by the learned District Judge, Nagpur, in Civil Misc. Appeal No.629/2019 in Civil Misc. Appeal No.791/2017 in RCA No.567/2015, dismissing the appeal filed by the appellant, who, despite getting opportunity, failed to assist the Court and to seek remedy in time.

3. The petitioner/plaintiff had filed a suit for declaration, permanent injunction and cancellation of sale-deed. The suit came to be dismissed vide judgment and order dated 23.05.2008. The plaintiff/petitioner filed appeal before the first appellate Court bearing First Appeal No.1420/2008. On 21.3.20217 the appellate Court passed order below Exh.1, dismissing the appeal filed by the appellant, for want of prosecution stating

therein that despite sufficient opportunity the petitioner/appellant and his counsel remained absent. Having found that there was no assistance from the petitioner's side, the appeal came to be dismissed as not prosecuted.

4. The petitioner prayed for recall of the order of dismissal dated 21.03.2017 and accordingly, filed applications to restore the appeal. However, there occurred delay in approaching the Court and therefore the application for restoration of appeal was accompanied with application for condonation of delay of 190 days.

5. According to the petitioner, the appeal was listed for final argument on 13.12.2016 but the counsel could not attend the Court due to personal problem. The appeal came to be listed for dismissal on 10.01.2017 and on that day, the counsel for the appellant remained absent and thus, the appeal came to be dismissed for want of prosecution.

6. The first appellate Court while observing that sufficient cause has been not shown, had also taken note of the fact that the petitioner has taken contradictory plea. On one hand that the petitioner's case was that counsel for petitioner was having difficulty and on the other, he stated that his counsel made an attempt to contact him but he did not respond to his counsel's call. Put all together the first appellate court

found that no sufficient reason was assigned and has accordingly refused to condone the delay vide order dated 28.09.2018.

7. The petitioner filed another proceeding, this time seeking review of the order dated 28.09.2018. Here also the petitioner approached belatedly and thus, was required to file application to condone the delay in filing review application.

8. To the utter annoyance, the counsel remained absent in these proceedings as well and accordingly, the first appellate Court noted that despite opportunity the petitioner's counsel remained absent and accordingly, dismissed the application with certain observations on merit as well.

9. Thus, it is evident that the petitioner and his counsel were not diligent in pursuing the cause at various levels. Despite repeated opportunities the petitioner and his counsel failed to assist the court and take appropriate steps.

10. That being so, I do not find any reason to interfere in the order impugned in the supervisory jurisdiction under Article 227 of the Constitution of India. The writ petition accordingly is dismissed. No order as to costs.

(ANIL L. PANSARE, J.)