



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

WRIT PETITION NO. 1046/2024

Sudhakar Namdeosa Gadail,
Aged 76 years, Occu.: Agriculturist,
R/o Pannalal Nagar, Amravati.

.... **PETITIONER**

// **VERSUS** //

1. Shobha Ramesh Gulhane,
Aged 68 years, Occ. Household,
R/o Samata Nagar, Murtijapur,
District Akola.
2. Ashok Namdeosa Gadail,
Aged 68 years, Occ. Agriculturist,
R/o Pannalal Nagar Shilangan Road,
Amravati

.... **RESPONDENTS**

Mr. A.M. Sudame, Advocate for the Petitioner.
Mr. P.S. Raut, Advocate for the Respondent No.1
Mr. S.A. Nerkar, Advocate for respondent No.2.

CORAM : SMT. M.S. JAWALKAR, J.

CLOSED FOR JUDGMENT ON : 24/02/2025.

JUDGMENT PRONOUNCED ON : 26/02/2025.

JUDGMENT :

1. **Rule.** Rule made returnable forthwith.
2. Heard finally by consent of the learned Counsel appearing for the parties.

3. The present petition is filed challenging the order passed by the learned 6th Joint Civil Judge Senior Division, Amravati, questioning the order dated 17.01.2024 in RMJC No.2808/2022. Another prayer is to quash and set aside the order dated 01.09.2022 passed by the learned 5th Joint Civil Judge Senior Division, Amravati, in MJC No.218/2021 (Shobha Guylhane Vs. Sudhakar Gadabail).

4. The petitioner No.1 is original defendant No.1, respondent No.1 is original plaintiff and respondent No.2 is original defendant No.2. Respondent No.1 filed a Special Civil Suit No.247/2018 against the petitioner and respondent No.2 and defendant No.3 seeking partition and separate possession. Defendant No.3 is the mother of the petitioner and respondent Nos.1 and 2. The said defendant No.3 Kausalyabai passed away on 06.02.2016. In view, thereof, the plaintiff/respondent amended the claim from 1/4th to 1/3rd share in the property. The consequential amendment was refused by the learned Trial Court. Therefore, the petitioner filed Writ Petition No.4260/2016, wherein this Court granted permission to carry out amendment within two weeks. Further time was extended to carry out the amendment by this Court. The learned Civil Judge Senior Division on 26.07.2019, passed the order below exhibit-1, which is produced on page 51. The suit came to be dismissed for want of evidence. It is observed by the Court that the issues were recasted on 05.03.2019 and since

14.03.2019, the matter is posted for evidence of the plaintiff. However, since 30.04.2019, there is no any application for adjournment is made by the plaintiff. The plaintiff remained absent since various dates. It seems that the plaintiff is not interested to adduce evidence. Thus order of dismissal came to be passed on 26.07.2019.

5. The plaintiff filed an application for condonation of delay in filing application for restoration vide MCA No.218/2021 in MJC No.218/2021. The said application came to be filed on 14.01.2021. On 01.09.2022, the learned Trial Court allowed the application for condonation of delay in filing the application for restoration. On 17.01.2024, the learned Trial Court allowed the application for restoration. The present petition is filed challenging both the orders on the grounds that there is no sufficient cause to condone the delay and secondly, on the ground that power of attorney i.e. the son of the plaintiff entered into the witness box and deposed on her behalf specifically when the applications are signed by plaintiff. It is also submitted that there is no medical certificate on record and applications are filed by the plaintiff herself. She ought to have entered into the witness box. It is further submitted that the matter was made time-bound by this Court. There was an application for extension of time by the learned Trial Court and there was Writ Petition No.738/2019 filed by the present petitioner. A common order came to

be passed on the application for extension of time and the petition filed by the petitioner i.e. Writ Petition No.738/2019. The said Writ Petition No.738/2019 was filed against the order passed by the learned Trial Court for refusal to grant extension to carry out amendment.

6. In earlier Writ Petition No.4260/2010 was allowed and the petitioner was permitted to amend the written statement i.e. consequential amendment within two weeks. However, the petitioner could not carry out the amendment within two weeks and, therefore, he made an application before the learned Trial Court for grant of permission to carry out the amendment. The learned Trial Court rejected the same on the ground that two weeks were granted by the High Court, therefore, he cannot extend the time. These causes the petitioner to file Writ Petition No.738/2019.

7. While disposing of the writ petition, this Court observed that it would be appropriate to grant extension of time to the petitioner to amend the written statement in pursuance of an earlier order dated 23.07.2018 passed by this Court in Writ Petition No.4260/2016. It is further observed that to issue notice to the respondents in Writ Petition No.738/2019 would further delay proceedings in the Court below, when the said Court has already submitted the aforesaid letter dated 17.01.2019, seeking extension of time for disposal of the suit. As such, notices were not issued to the respondent in writ petition.

8. Learned Counsel for the petitioner relied on following judgments:

- i) *Man Kaur (dead) by. LR's Vs. Hartar Singh Sangha (2010) 10 SCC 512.*
- ii) *Balwant Singh (dead) Vs. Jagdish Singh and others (2010) 8 SCC 685.*
- iii) *Basawaraj and another Vs. Special Land Acquisition Officer (2013) 14 SCC 81.*
- iv) *Sagufa Ahmed and others Vs. Upper Assam Polywood Products Private Limited and others (2021) 2 SCC 317.*

9. As against this the learned Counsel for the respondents submitted that there is no ground made out to interfere in the order passed by the learned Trial Court. In the first place, he has pointed out that the learned Trial Court passed dismissal order for want of evidence on the assumption that the plaintiff is not interested to adduce evidence. However, he has pointed out that the affidavit of evidence was filed on 25.09.2014, not only this, further chief was also recorded on 08.12.2015. Therefore, the basic ground for dismissing the suit can not sustain in the eye of law. The learned Counsel for respondents also pointed out the reasons, which are sufficient to condone the delay and restoration of suit.

10. I have heard both the parties at length, perused impugned orders and documents and considered citations relied on. In the application for condonation of delay, plaintiff has submitted that the

mother of plaintiff Kaushalyabai i.e. defendant No.3 in original suit expired. Thereafter, plaintiff has amended the plaint and claimed 1/3rd share instead of 1/4th share. In between, the present petitioner/defendant No.1 filed an application for consequential amendment in written statement. Kausalyabai executed a will in favour of his son. It is contention of the plaintiff that she was not having any knowledge of passing of order in Writ Petition No.738/2019. There was stay during 2016 to 2018. As such, she was under the impression that matter is stayed.

11. Learned Counsel for the petitioner drawn my attention to M.C.A. No. 2018/2021, wherein in paragraph No.12 of the application, there are specific reasons mentioned from (i) to (vii) for delay in filing application for restoration of petition. It also appears that the power of attorney i.e. son of the plaintiff led evidence on behalf of the plaintiff in application for condonation of delay. He was duly cross examined. As such, due opportunity was granted to the respondent/petitioner herein.

12. Learned Counsel for respondents also drawn my attention to the order below application RMJC No.218/2021, wherein the learned Trial Court has taken into account all the contentions of the parties. It is a matter of record that plaintiff is the resident of Murtijapur and proceedings were pending at Amravati. She is an old

lady and suffering from hypertension and asthma. She has undergone continuous treatment in the year 2019, as per medical certificate exhibit 4/4 with Dr. Wankhede at Murtijapur. There is another circumstance which needs to be taken into account that there was an outbreak of Covid-19 Pandemic and there was uncertain lock down also. There was uncertainty in the minds of people. It is also a matter of record that trial was stayed for some period. It is also a matter of record that the plaintiff was not having any notice while passing the order in Writ Petition No.738/2019. In my considered opinion, all these circumstances are taken into account by the learned Joint Civil Judge Senior Division, Amravati. This passing of order of condonation of delay was not challenged by the petitioner for two years. It is also matter of record that plaintiff notarized application for condonation of delay and restoration application at Murtijapur. As such, there is substance in her contention that she was not fit to attend the matter each and every time at Amravati and she was under the impression also that matter was pending as there was stay. Plaintiff has also placed on record her medical certificate of one Dr. Wankhede about her illness.

13. The learned counsel for petitioner relied on ***Man Kaur (supra)***, in support of his contention that the son of the plaintiff was not having any knowledge and he cannot depose on her behalf.

However, in paragraph No.18, the Hon'ble Apex Court clarified the position, which reads as under:

“18 (g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his "state of mind" or "conduct", normally the person concerned alone has to give evidence and not an attorney-holder. A landlord who seeks eviction of his tenant, on the ground of his "bona fide" need and a purchaser seeking specific performance who has to show his "readiness and willingness" fall under this category. There is however a recognised exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or "readiness and willingness". Examples of such attorney-holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of son/daughter living abroad”

As such, son is the close family member who was exclusively managing the affairs of his old mother. In my view, his evidence falls under IInd category as held in above judgment and his evidence can be accepted.

14. Learned Counsel for petitioner also relied on **Balwant Singh (supra)** to explain what is sufficient cause. In **Balwant Singh (supra)**, the Hon'ble Apex Court held that:

“Liberal construction of the expression "sufficient cause" is intended to advance substantial justice which itself

presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. The expression "sufficient cause" implies the presence of legal and adequate reasons. The word "sufficient" means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the court, in exercise of its judicial discretion, to treat the delay as an excusable one. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention."

15. Similar is the view taken in the judgment cited by the petitioner in ***Basawaraj and another (supra)***. It is held that sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. The facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously.

16. The learned Counsel for petitioner placed reliance in ***Sagufa Ahmed and others (supra)***, in support of his contention that the

plaintiff cannot take advantage of extension of limitation during Covid-

19. The Hon'ble Apex Court held in paragraph No.17 as under:

“17. But we do not think that the appellants can take refuge under the above order in Cognizance for Extension of Limitation, In re³. What was extended by the above order of this Court was only "the period of limitation" and not the period up to which delay can be condoned in exercise of discretion conferred by the statute. The above order³ passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is vigilantibus et non dormientibus jura subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.”

There is no dispute over this proposition. Each case has to be considered as per facts and circumstances involved in the matter.

17. After going through the orders, citations relied on and on perusal of documents, I do not see any perversity or illegality in the order passed for condonation of delay or restoration of suit. In the first place, the age of the petitioner and ailments, which she is suffering, which is supported by a medical certificate. Secondly, she was not having any knowledge of passing of order in Writ Petition No.738/2019. There was a stay to the proceedings in the month of July 2016. It is not the case that she was not diligence. She has already filed

her affidavit of evidence and even her additional chief was also recorded. She is a resident of Murtijapur and matter is pending at Amravati. She could not attend each and every date, however she was also not informed by her Counsel about updates. Judicial note also can be taken that since, end of the year 2019, there was a peculiar and unprecedented situation due to the outbreak of COVID-19. All these factors if taken into account cumulatively, I do not see any perversity in the order dated 01.09.2022 passed by the learned 5th Joint Civil Judge Senior Division, Amravati in MJC No.218/2021 and the order dated 17.01.2024 passed by the learned 6th Joint Civil Judge Senior Division, Amravati, in RMJC No.2808/2022. Accordingly, there is no merit in the petition. The petition is dismissed.

(SMT. M.S. JAWALKAR, J.)

R.S. Sahare