



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

WRIT PETITION NO. 1438 OF 2021

(Shri Dilip s/o Dashratha Vairagade & Anr. Vs. Maharashtra Co-operative Bank Ltd., through its Sub-Manager)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. P.K. Mishra, Counsel for the petitioners.
Mr. P.S. Tidke, Counsel for the respondent.

.....

CORAM : ANIL L. PANSARE, J.
MARCH 3, 2025

Heard.

2] Challenge is to order dated 4/2/2020 passed below Exhibit – 1 by the Ad hoc District Judge – 6, Nagpur, in M.C.A. No. 910/2018, thereby refusing to condone delay of about six years in filing appeal against dismissal of application seeking to condone delay for setting aside *ex parte* decree dated 30/1/2017.

3] Having heard both sides and having gone through the record, it transpires that the respondent had filed suit being Regular Civil Suit No. 49/2011 for eviction and possession. The suit was filed before the Small Causes Court, Nagpur. The suit proceeded *ex parte*, and vide judgment and decree dated 19/7/2012, the suit was decreed.

4] The petitioner – judgment debtor then, on 20/3/2015, filed application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (for short “the Code”), for setting aside the decree. Since the petitioner approached belatedly, along with application under Order

IX Rule 13 of the Code, he filed an application to condone delay being M.J.C. No. 38/2015. The said application was rejected on 30/1/2017.

5] Against the said order, the petitioner preferred revision being Civil Revision No. 13/2017 before the First Appellate Court. Pending revision, the petitioner thought it proper to file appeal challenging the judgment and decree dated 19/7/2012 passed by the Additional Judge, Small Causes Court, Nagpur, in Regular Civil Suit No. 49/2011. Along with appeal, the petitioner filed yet another application seeking to condone delay of about six years being M.C.A. No. 910/2018.

6] This application has been rejected, *inter alia*, on the ground that the petitioner has suppressed vital fact, viz., filing civil revision against order dated 30/1/2017. The First Appellate Court noted that not only the said important aspect was suppressed but false allegations on oath were made against previous Counsel about his negligence in preferring appeal.

7] The aforesaid conduct indicates that the petitioner is not only negligent but has made an attempt to mislead the Court by suppressing vital fact. The order impugned indicates that the revision was pending when the petitioner filed application to condone delay in filing appeal. When the fact of pendency of revision was brought to the notice of the petitioner's Counsel by the First Appellate Court, the Counsel submitted that the petitioner had filed pursis for withdrawal of the said revision.

8] The First Appellate Court has passed well reasoned judgment as regards failure of the petitioner to show due diligence in filing appeal, I, however, need not go into those details inasmuch as the petitioner carries a blame of suppression of fact and, therefore, the petition is liable to be dismissed on this count alone. The petitioner has suppressed the fact to get rid of the provisions of the Limitation Act, 1963.

9] The Hon'ble Supreme Court in the case of *Pundlik Jalam Patil (Dead) By LRs Vs. Executive Engineer, Jalgaon Medium Project And Another [(2008) 17 SCC 448]* held that an incorrect statement made in the application seeking condonation of delay itself is sufficient to reject the application without any further enquiry as to whether the averments made in the application reveal sufficient cause to condone the delay. The Court further held that a party taking false stand to get rid of bar of limitation should not be encouraged to get any premium on the falsehood of his theory by condoning the delay.

10] In the present case, the petitioner has suppressed that he has filed revision challenging order dated 30/1/2017. Thus, on one count, he pursued remedy for availing benefit under Order IX Rule 13 of the Code, and pending decision in the said proceedings, the petitioner filed application to condone delay in filing appeal against the *ex parte* decree but by suppressing other proceedings. He has blamed his earlier Counsel for not acting diligently and, thus, made an attempt to seek sympathy of the Court. The petition is, therefore, liable to

be dismissed on this count alone and requires no further enquiry.

11] The learned Counsel for the petitioner, however, has relied upon the judgment of the Supreme Court in the case of *Bhivchandra Shankar More Vs. Balu Gangaram More And Others* [(2019) 6 SCC 387] so also the judgment passed by a Co-ordinate Bench of this Court in the case of *Durgadas Bajiraoji Mokhade Vs. Jayshri Hemraj Agrawal* [2020(1) Bom. C.R. 388] to contend that time spent in pursuing different remedy can be considered as sufficient cause for condonation of delay.

12] True it is that, in the present case, time spent in pursuing remedy under Order IX Rule 13 of the CPC could have been considered as sufficient cause subject to the petitioner disclosing the said fact before the Court. Having suppressed pendency of revision, the petitioner cannot take benefit of the above judgments to argue that time spent in pursuing remedy under Order IX Rule 13 of the CPC should be considered as sufficient cause for condoning the delay. The petitioner carries a blame of suppression of fact and, therefore, deserves no leniency.

13] The petition is accordingly dismissed. No costs.

(ANIL L. PANSARE, J.)

Sumit