



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

WRIT PETITION NO. 4029 OF 2023

Smt. Rama Jaiprakash Chourasia

Vs.

Kamala Shrivastava

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

Mr. Amit C. Khare, Advocate for the petitioner.

Mr. Abhay K. Sukhdeve, Advocate for the respondent.

CORAM : SACHIN S. DESHMUKH, J.

DATE : 08/07/2025

Heard learned counsel for the respective sides.

2. The petitioner a landlady having inducted respondent as a tenant filed Regular Civil Suit No.301/2009 for ejectment, possession and recovery of arrears of rent from the respondent-tenant.

3. However, the suit presented by the petitioner came to be dismissed in default on 01.03.2013. The concerned Judge, Small Causes Court, Nagpur, considering the insufficiency of reasons for such delay, refused to restore the suit by dismissing the application on 01.07.2017.

4. On account of order of dismissal, the petitioner presented Misc. Civil Application No.488/ 2019 requesting to restore suit by filing appeal for quashing and setting aside the order of dismissal thereby remanding the case to the concerned Court for deciding the suit of the petitioner on merits, wherein the delay of 692 days has occurred, therefore, requested to condone the delay.

5. Respondent-tenant contested the application, who is in default of the rent amount. Misc. Civil Application No.488/2019 seeking condonation of delay came to be dismissed by the First Appellate Court by the Special Judge, Special Court for Differently Abled Persons Senior Citizens and Marginalized Section of Society, Nagpur holding that delay is not properly explained and the reasons assigned for such delay are not available to the petitioner.

6. Petitioner has assailed the order refusing to condone delay in the present petition rendered by the appellate authority seeking condonation of delay of 692 days caused in filing the appeal against the order of 01.07.2017, passed in MJC No.47/2015.

7. Taking into account the fact that petitioner is an age old feeble lady suffering with severe and several ailments, the event of demise of petitioner's husband in the year 2018 who was suffering ailment for substantial period, and also the fact of missing of son of the petitioner in the year 2015 had prevented the petitioner from prosecuting the proceeding promptly. Even the fact that request was made to the District Legal Services Authority [DLSA] to ensure that proceedings are prosecuted on behalf of the petitioner by extending legal aid, the said fact is not even disputed by learned counsel for the respondent. In the process substantial time has been consumed. In any case when technicalities are pitted against substantial justice in the matter, substantial justice shall always prevail and in any event technicalities shall not defeat the justice. This Court is guided by the observations of the Apex Court in the matter

of *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others* reported at *(2013) 12 SCC 649*, paragraph Nos. 21.1, 21.2 and 21.3 which reads as under:-

“21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.”

Considering this aspect and applying the aforesaid principles this Court is inclined to allow the application for condonation of delay occurred in filing the application of the petitioner. In any case, petitioner is not benefitted in any manner on account of delay, rather determination of entitlement of petitioner to the reliefs in suit is deferred.

8. Accordingly, petition is allowed.

9. The order dated 18.04.2023 rendered by Special Judge, Special Court For Differently Abled Persons Senior Citizen and Marginalized Section of Society, Nagpur, is quashed and set aside. The application under Exh.1 bearing M.J.C. No.47/2015 is allowed.

10. Regular Civil Suit No.301/2009 is restored to the file of Judge Small Causes Court, Nagpur. Considering the fact that petitioner is senior citizen proceedings are expedited. The concerned Court is requested to expedite proceedings and conclude the same within a period of six months from date of receipt of this order.

11. Writ Petition stands disposed of. No costs.

(SACHIN S. DESHMUKH, J.)

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