



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

Writ Petition No. 2126 of 2023

[Ravindra Radhakisan Kasat ..vs.. Punjabrao Namdeorao Jayale]

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

Court's or Judge's orders

Mr. Alok Daga, Advocate for the petitioner
Mr. V. B. Bhise, Advocate for the respondent

CORAM : ANIL L. PANSARE J.

DATED : 05-05-2025

Heard.

2. The learned counsel for the respondent submits that the petition is not maintainable. According to him, remedy is to file revision under Section 115 of the Code of Civil Procedure, 1908 (for short 'the Code'). In support, he has referred to judgment of the Supreme Court in the case of *N. Balakrishnan Vs. M. Krishnamurthy* [AIR 1998 SC 3222]. In the said case, the application seeking condonation of delay to set aside *ex-parte* decree was rejected. The trial Court allowed the application. The High Court in revision held that delay was not properly explained and accordingly set aside the order. The Supreme Court took an exception to such approach on the ground that in revision, the High Court ought not to have upset the finding and the better option was to compensate the opposite party, while upholding the order passed by the trial Court.

3. The judgment does not really deal with the scope of Section 115 of the Code except to the extent that High Court could not have upset the finding in revisional jurisdiction.

4. In the present case, the petitioner is not only seeking to set aside the order passed by the trial Court thereby condoning delay but is also praying for rejection of the

application so filed. It cannot be, therefore, said that the only remedy available is under Section 115 of the Code. The objection is accordingly overruled.

5. The petitioner – original decree holder is aggrieved by order dated 29-10-2022 passed by learned Civil Judge Senior Division, Akot in M.J.C. No. 25/2021 thereby allowing the application seeking condonation of delay of 86 days in filing application for restoration of the application which the respondent had filed seeking condonation of delay in filing application for setting aside ex-parte decree.

6. It appears that suit being Special Civil Suit No. 67/2013 filed by the petitioner seeking specific performance of contract came to be decreed partly directing respondent to refund earnest amount of Rs. 3,80,000/-. The decree was passed on 16-12-2014.

7. The respondent approached the trial Court with request to set aside ex-parte decree. However, since there occurred delay in filing such application, he preferred yet another application seeking to condone delay. This application came to be dismissed for want of prosecution. Thereafter the petitioner filed yet another application for condonation of delay in filing application to restore the earlier application.

8. The plea put forth by the respondent was that M.J.C. No. 387/2015 was transferred from Akola to Akot and was re-numbered. According to respondent, his counsel did not intimate the said fact and, therefore, he did not attend the proceedings. In the cross-examination, however, the respondent admitted that he was aware of M.J.C. No. 387/2015 being transferred from Akola to Akot and that the said application was re-numbered as 197/2018 and further that he received notice on 18-3-2019 sent by the Court at Akot. He

further admitted that he did not take any action after receiving notice.

9. The above cross-examination has completely destroyed the respondent's plea that he was not aware of transfer of M.J.C. from Akola to Akot. Thus, a false plea was taken by the respondent to get rid of the limitation.

10. The 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 incorrect statement made in application seeking condonation of delay itself is sufficient to reject the application without any further enquiry as to whether the averments made in application reveal sufficient cause to condone delay.

11. That being so, the trial Court committed serious error of law in allowing respondent's application to condone delay in filing application to restore earlier application.

12. Learned counsel for the respondent though made an attempt to justify the order, he failed to come out of the blame which the respondent carries that he made a false statement to overcome the issue of limitation.

13. The petition is allowed. Order dated 29-10-2022 passed by the Civil Judge Senior Division, Akot in M.J.C. No. 25/2021 is quashed and set aside. Application M.J.C. No. 25/2021 is rejected.

(Anil L. Pansare, J.)