



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

Writ Petition No.6832/2024
Raju and others V Dilip and others

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

Court's or Judge's orders

Mr. H.V. Thakur, Adv. for petitioners.
Mr. A.V. Lokhande, Adv for respondent no.1 to 6.

CORAM : R.M. Joshi, J.
DATE : 03-07-2025.

This petition takes exception to the order dated 04-09-2024 passed in Civil M.A. No.30/2023, whereby the trial Court has refused to condone the delay of 11 days in preferring the application for restoration of M.J.C. No.6/2018 which came to be dismissed on 05-02-2016.

2. The facts as appeared from the record indicate that the present application is filed for condonation of delay of 11 days in filing the application for restoration of M.J.C. No.6/2018. The applicants claim that one of the applicants was not keeping good health and on that count he was unable to file the application in time. The other applicants claim that the one who was not keeping good health was looking after the proceedings and as such they have not independently filed the application. The application came to be resisted by the respondent herein.

3. The trial Court rejected the application essentially on the ground that the previous application was made belatedly i.e after two and half years of the period of limitation. Trial Court does not dispute the fact about the illness of one of the applicants. However, it is observed that nothing prevented to other applicants to file application in time.

4. Heard learned Counsel for both the sides.

5. There is no dispute about the fact that one of the applicants who was looking after the proceeding before the Court fell ill and due to the said reason, there was a delay caused of 11 days in filing of the application. The fact of sickness of the applicant is not in dispute even trial Court does not dispute the said fact only on the ground seems to have weighed the mind of the trial Court that the earlier application was filed belatedly after two and half years. This Court finds substance in the contention of Counsel for petitioner that if the trial Court was considering the said delay, the merit of the said delay also ought to have been taken into account. This submission deserves acceptance for the reason that if ultimately it is found that the delay is satisfactorily

explained, the same cannot become a ground for rejecting the present application.

6. Considering the aforesaid facts more particularly when there is a no dispute made by the respondent with regard to the fact that one of the applicants was sick and who was looking after litigation, this Court finds no substance in the reasons recorded by the trial Court for rejecting the application.

7. The counsel for the respondent has relied upon judgment of the Hon'ble Supreme Court in case of Pathapati Subba Reddy (Died) by L.Rs. and others vs Special Deputy Collector (LA), reported in 2024 SCC OnLine SC 513, wherein considering the facts of the case more particularly the fact that there was no reason substantiated for condonation of delay, the delay in the said case was refused to be condoned. Once there is no dispute and that on account of illness the application could not be filed in time, it can be said that the delay has been satisfactorily explained. No purpose would be served for the respondent even if the application of one of the applicants is held to be maintainable. In the facts of the present case, impugned

order is set aside subject to applicants paying cost of Rs. 5000/- to the respondents.

8. The payment of cost would be the pre-condition for taking the M.J.C. No.6/2018 on the file of the trial Court.

9. Cost be paid within a period of two weeks.

(R.M. Joshi, J.)