



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

WRIT PETITION NO.169 OF 2025

PETITIONER : **Smt. Mina Khushal Bode,**
(On R. A.) Age : 47 years, Occupation : Housewife,
R/o. : Plot no.57, Sant Dnyaneshwar Ward,
Behind Apna Tractor Showroom, Tahsil
Hinganghat, District : Wardha
(Original Defendant No.2 in Special Civil Suit
No.161/2017)

..VERSUS..

RESPONDENTS : 1. **Marotrao Fakiraji Zade,**
(On R. A.) Age : 75 years, Occup. : Agriculturist, R/o. :
Dongargaon, Tahsil : Samudrapur, District :
Wardha
(Original Plaintiff in Special Civil Suit
No.161/2017)
2. **Shailandra Vasantrao Pampanwar,**
Age : 45 years, Occup. : Private, R/o. : Sant
Dnyaneshwar Ward, Tahsil : Hinganghat,
District : Wardha
(Original Defendant No.1 in Special Civil Suit
No.161/2017)

Mr R. D. Hajare, Advocate for Petitioner.

CORAM : **ANIL L. PANSARE, J.**

DATE : **10th JANUARY, 2025.**

ORAL JUDGMENT

1. The petitioner – original defendant No.2 is questioning order dated 05.11.2024 passed below Exhibit – 1 by the learned District Judge - 2, Hinganghat in Misc. Judicial Case No.33 of

2023.

2. Having heard counsel for petitioner, it transpires that on 30.06.2020, the learned Civil Judge, Senior Division, Hinganghat, has decreed Special Civil Suit No.161 of 2017 filed by Respondent No.1 (plaintiff). Pending suit, respondent No.2 – Shailendra/ original defendant No.1 had sold the suit property to petitioner. Respondent No.1 – therefore, amended the plaint and joined petitioner as defendant No.2. The suit summons was served upon her on 17.03.2018. She chose not to appear. The trial proceeded ex-parte.

3. Respondent No.1, thereafter, filed execution proceedings *vide* Special Darkhast No.1 of 2021. Notice came to be issued to petitioner and was served upon her on 23.02.2021. She appeared before the Court on 06.03.2021 through her counsel. A draft sale deed was placed on record. The executing Court issued notice to petitioner and respondent No.2 calling their objections on the draft sale deed. The said notice was served on petitioner on 25.02.2022. Since the objection was not filed, the sale deed was executed by the Court Commissioner. The execution petition is now pending for order on application for possession warrant of suit property.

4. Thereafter, the petitioner thought it proper to file an appeal against the judgment and decree dated 30.06.2020. Since there was a delay of 234 days in filing the appeal, an application to condone the delay was filed. The First Appellate Court noted the aforesaid facts and found that the petitioner was extremely negligent in pursuing the remedy. She has not tendered any cause much less sufficient cause to approach the Court belatedly.

5. The judgment and decree was passed on 30.06.2020. The petitioner applied for certified copy after about one and half years *viz.* on 25.01.2022. The copy was delivered to the petitioner on 04.02.2022. According to the petitioner, her son was suffering from illness and being illiterate women, she was not able to understand the critical and hyper technical procedure of Court. She was required to wait for her son to get medically fit to approach the Court in time.

6. The First Appellate Court noted that she has not filed a single document in support of her claim. Thus, except a bald statement that her son was not keeping well, there is nothing on record to support the claim.

7. The petitioner then entered witness box and to the utter surprise, she denied her signature on the suit summons received by her in Special Civil Suit No.161 of 2017. She has further denied her signature on the affidavit filed in lieu of chief examination before the executing Court. She showed ignorance of receipt of notice in Special Darkhast No.1 of 2021, which was served upon her on 23.02.2021. She, however, admitted that she had appointed an Advocate Mr. Mayur Moon on the basis of notice received by her.

8. Noting aforesaid conduct, the First Appellate Court rejected the application, which to my mind is a right approach. If, the petitioner had on 06.03.2021 engaged an Advocate on behalf of her in execution proceedings, there appears no reason why should she not file an appeal immediately thereafter. It further appears that she had obtained certified copy of the judgment and decree on 04.02.2022, but filed an application seeking condonation of delay in the year 2023. If, she could engage an Advocate to appear in execution proceedings and could also obtain certified copy of the judgment and decree, despite her son being ill, she could have filed an appeal as well.

9. Thus, apart from the fact that there is no evidence in support that her son was ill, the record indicates that she could have filed appeal well within time. The First Appellate Court, therefore, has rightly held that the petitioner failed to show sufficient cause in approaching the Court belatedly. No interference is called for in the impugned order dated 05.11.2024 in the supervisory jurisdiction under Article 227 of the Constitution of India. The petition is accordingly **dismissed**.

(ANIL L. PANSARE, J.)

TAMBE