



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

Writ Petition No. 529 of 2025

1 s/o. Madhavrao Bhongade (dead), through legal heirs Mrs. Sindhu wd/o Ramesh Bhongane
and ors. ..vs.. Chhaya wd/o Krishnarao Bhongade]

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

Court's or Judge's orders

Ms. Tejal A. Agre, Advocate for the petitioners

CORAM : ANIL L. PANSARE J.

DATED : 29-01-2025

Heard.

2. The petitioner-original plaintiff intended to challenge judgment and decree dated 28-4-2016 thereby dismissing the suit, however, there occurred delay of 99 days and, therefore, the application was filed to condone delay being Civil Misc. Application No. 1011/2016. This application has been rejected by the Court below vide impugned order dated 2-1-2018 which reads thus :

“There is order below Exh. 11, directing the applicant to remain present for cross-examination. The counsel for the N.A. is present and he is pressing hard for compliance such order of Court. The applicant and the counsel are absent. In such situation, for default in such situation, for default in obeying order and for absence of applicant, this application is dismissed.”

3. As could be seen, the petitioner failed to subject himself to the cross-examination despite the directions of the Court and, therefore, the Court has dismissed the application for non compliance of the order.

4. The petitioner then filed yet another application to set aside aforesaid order dated 2-1-2018. Here also, the

petitioner approached belatedly and, therefore, was required to file application to condone delay of 15 days in filing application to set aside the aforesaid order. One of the reasons put forth by the petitioner was that his counsel before the trial Court did not inform him that his physical presence was required in the Court on 2-1-2018. Thus, the counsel is being blamed without making him party to the proceedings. The coordinate Bench of this Court in the case of ***Kanta alias Shanti W/o Subhash Karkale Vs. Manjulabai alias Kholki W/o Haribhau Tarare and anr. [(2020) Mh.L.J. 918]*** held that if the party intends to condemn the counsel, it should make the counsel party respondent and thereafter make allegations. Be that as it may, there is nothing as to what prevented even the counsel from appearing before the trial Court on 2-1-2018.

5. The petitioner had also put forth ground of medical ailment to justify the absence. The trial Court noted that no medical evidence was filed except photocopy of discharge card of the brother despite the objections and challenge thereto by the respondent – original non-applicant for not producing original or certified copy thereof. No explanation is coming forth as to why original was not produced.

6. The trial Court has then referred to the evidence of the applicant in Misc. Civil Application No. 217/2018, who is predecessor of the petitioner. He has, in evidence, deposed that he does not know whether he has filed said application viz. Misc. Civil Application No. 217/2018 and whether the contents of the application are true and correct.

7. Having found so many discrepancies, the trial Court rejected the second application as well. I find that both the orders are consistent with the facts and evidence before the Court. No interference is, therefore, called for in supervisory

jurisdiction under Article 227 of the Constitution. The petition is accordingly dismissed with no order as to costs.

(Anil L. Pansare, J.)

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