



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

WRIT PETITION NO. 1199 OF 2025

Laxman s/o Tukaram Durge

... PETITIONER

Versus

Sadashiv s/o Parvat Dhoke (dead)
through L.Rs.

... RESPONDENT

Ms. Radha Mishra, Advocate (Appointed) for Petitioner.

CORAM : ANIL L. PANSARE, J.

DATE : MARCH 06, 2025.

ORAL ORDER

. Heard Ms. Radha Mishra, learned Counsel (Appointed) for the Petitioner.

2. The Petitioner is aggrieved by the order dated 31/7/2023 passed by the learned District Judge-2, Nagpur in Misc. Civil Appeal No. 858/2018, thereby dismissing the application filed by the Petitioner to restore Misc. Civil Appeal No. 92/1994. While dismissing the application, the first appellate court noted the conduct of the Petitioner, which to my mind, is sufficient to dismiss the instant Petition as well.

3. Having heard learned Counsel for the Petitioner and having gone through the material placed before me, it appears that the Petitioner has filed a suit for injunction against the Respondent being Regular Civil Suit No. 1322/1991. It appears that the trial court passed some order below Exhibit-18

in the suit and the Petitioner had challenged the same in appeal being Misc. Civil Appeal No. 92/1994.

4. Thus, the suit, that was filed in the year 1991, is kept pending to test order passed by the trial court below Exhibit-18. The appeal came to be filed in the year 1994 and is pending adjudication for last 30 years.

5. The order impugned indicates that this appeal was firstly dismissed in default on 31/10/2000. It was restored upon request made by the Petitioner. It was, however, again dismissed in default on 3/1/2006. Again it was restored. The Appeal then was again dismissed in default on 7/2/2014. The Petitioner moved application for restoration of appeal, which came to be rejected.

6. The first appellate court noted that appeal is of the year 1994. It was dismissed on multiple occasions because of the laches committed by the Petitioner. He failed to appear on multiple occasions, and thus, failed to argue the appeal. So far as the reason assigned for his absence, which resulted into passing impugned order is concerned, according to the Petitioner, his earlier Counsel informed him that he is unable to attend the Court, and therefore, the Petitioner should engage another Advocate. According to the Petitioner, he failed to do so because of financial constraint.

7. When asked as to what is Petitioner doing, the learned Counsel, on instructions, submits that he is retired Bank employee and is getting pension at Rs.16,000/- per month. The property under question is a plot admeasuring 1000 sq. ft. situated at Itwari, Nagpur, the area known to be a commercial hub and carries huge value. The Petitioner submits that there were three rooms on the plot. Thus, the Petitioner, who owns plot admeasuring

1000 sq. ft. at Itwari and is getting pension at Rs.16,000/- per month, is claiming to be a person who is not in a position to engage a lawyer.

8. The order impugned indicates that the Petitioner had not annexed any evidence in support of his so called financial constraint, may be because the status noted above would have exposed him, had the documents filed on record.

9. Further, what appears from the impugned order is that the application was completely silent as to who was the earlier Counsel, who had withdrawn the Vakalatnama. The Court further noted that the application under question was pending for hearing since February-2019. It was posted for dismissal order on 23/2/2022 and such status continued till 6/4/2023. Thus, the matter was posted for dismissal order for about two years and none appeared for the Petitioner. The first appellate court further noted that the suit was also posted for dismissal order since 7/4/2022 till the date of passing order i.e. 31/7/2023.

10. Thus, it is evident that the Petitioner is extremely casual and negligent in pursuing his own cause. That being so, the appellate court appears to have rightly dismissed the application to restore the appeal. Even otherwise, the challenge was to the interim order. The suit is still pending. The Petitioner may pursue his suit, if he so desirous of.

11. With the above observations, Writ Petition is dismissed with no order as to costs.

12. Ms. Radha Mishra, the learned Counsel appointed for the

Petitioner appeared in the matter. Her professional fees be quantified and paid as per Rules.

(ANIL L. PANSARE, J.)

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