



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

WRIT PETITION NO. 3117 OF 2025

1. Sharad C. Wasekar, aged 50 years, Occ: Agriculturist,
R/o Wagholi, Tah. Hinganghat, District Wardha.
2. Bandu C. Wasekar, aged 45 years, Occ: Agriculturist,
R/o Wagholi, Tah. Hinganghat, District Wardha.

PETITIONERS

VERSUS

1. Chandrakala Rajhans Bhagat, aged 50 years,
Occ: Housewife, R/o Takalghat, Tah. & Dist. Nagpur.
2. Gangabai Ishwar Moon, aged 46 years, Occ: Housewife,
R/o Waigaon (Nippani), Tah. and District Wardha.
3. Rukhma Gopala Wasekar, aged 85 years,
R/o Wagholi, Tah. Hinganghat, District Wardha.

RESPONDENTS

Shri R.A. Bhandakkar, counsel for the petitioners.
Shri D.R. Upadhyay, counsel (Appointed) for the respondents.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : JANUARY 28, 2026

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. This petition takes exception to the order dated 24.01.2025 passed below Exhibit 1 in M.J.C. No.30 of 2023 thereby restoring the civil suit which was dismissed in default.

3. While assailing the impugned order, the counsel for the petitioners submits that the respondents had filed the suit for declaration and permanent injunction which was not diligently prosecuted and was rightly dismissed in default by order dated 14.10.2008. The respondents

thereafter filed M.J.C. No.30 of 2023 seeking condonation of delay of more than fourteen years and restoration of the civil suit without mentioning any sufficient cause. He submitted that the reasons mentioned in the application about the children of the respondents being minors and the reasons about financial constraints did not amount to sufficient cause and said M.J.C. deserved to be rejected.

4. While opposing the petition, the learned counsel for the respondents-original plaintiffs submitted that the impugned order restoring the civil suit need no interference on any count. He submitted that the trial Court has rightly given due consideration to the position of law as regards condonation of delay and having found the reasons genuine has allowed the application subject to payment of costs.

5. While considering the controversy, it has to be seen that by the impugned order the trial Court has directed restoration of the civil suit. Although the respondents were not diligent in prosecuting the said civil suit, it has to be seen that the civil suit filed by the respondents is for seeking partition and separation possession and the same is required to be decided on merits. The record reveals that the respondents have engaged a lawyer from Legal Aid Panel for filing the application for restoration of the civil suit. Even before this Court, the respondents are being represented by a lawyer from the Legal Aid Panel. As such, it becomes clear that the reason mentioned by the respondents about financial constraints does not appear to be wrong. Hence, though the respondents were not diligent in

prosecuting the suit, they need not be non suited only on account of their failure to prosecute the said suit at the relevant time.

6. A perusal of the impugned order shows that the trial Court has considered the position of law as laid down in the judgments of the Hon'ble Supreme Court in *Isha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar Academy & Others* [(2013) 12 SCC 649], *K.B. Lal Krishna Bahadur Lal Versus Gyanendra Pratap & Others* [2024 INSC 281] and several other judgments as mentioned in the impugned order. The impugned order is well reasoned and no perversity is seen warranting an interference under Article 227 of the Constitution of India. The writ petition therefore deserves to be dismissed and the same is dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)