



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

WRIT PETITION NO. 5226 OF 2022

M/s. Rajeshwari Builders and
Developers, A Partnership Firm
through its Partner – Shri Narendra
Vishramji Dudhe, having office at 289
'Rajeshwari' and Shri Mangesh S. Sarawar,
Temple Bazar, Sitabuldi, Nagpur,
Tahsil and District – Nagpur,
(Maharashtra State)

....**PETITIONER**

....**VERSUS**....

1. Rammurthy Bhimsen Chawla
is R/o Plot No. 60, Gayatri Nagar,
Beside Baba Farid Nagar, Koradi Road,
Nagpur, Dist. Nagpur
(amended as per order dated 11/11/2022)
2. Devidas Mahadeo Maske,
Aged – Major, Occupation – Not Known,
R/o Mata Mandir, Bastarwadi,
Near Itwari Railway Station, Nagpur,
Tahsil and District – Nagpur
(Maharashtra State)

....**RESPONDENTS**

Shri Abhijeet Khare, Advocate for petitioner
Shri N.B. Bargat, Advocate for respondent No.1

CORAM : SMT. M.S. JAWALKAR, J.
DATED : 14/01/2025

ORAL JUDGMENT

- (1) Rule. Rule made returnable forthwith.
- (2) Heard learned Counsel for both the parties.
- (3) The present Petition is filed challenging the order dated 20/10/2021 passed below Exhibit 1 in M.J.C. No. 196/2021, by the learned 18th Joint Civil Judge Senior Division, Nagpur.
- (4) The Respondent No. 1 i.e. Applicant in M.J.C. No. 196/2021 has filed the Special Civil Suit No. 956/2011 and the said Suit is dismissed in default on 31/01/2017. It is the contention of the Applicant before the learned Trial Court in the Application for condonation of delay that his Advocate has not intimated about the dismissal of the Suit in default and after enquiry, in the month of September, 2020 with his Counsel, it was informed that the Suit is dismissed. Till September, 2020, he was under the bonafide belief that the Counsel is prosecuting the matter before the learned Civil Court properly and diligently. He, thereafter, applied for certified copy and along with the medical certificate, filed the Application for condonation of delay. It is his contention that he is physically handicapped person and has undergone one major heart surgery. He has also submitted that the Court Proceedings were affected due to the pandemic Covid-19. It appears that on the basis of the documents filed along with the Application and on the

basis of the submissions, the M.J.C. No. 196/2021 came to be allowed and the delay in filing the Restoration Application was condoned.

(5) Learned Counsel for the Petitioner submitted that in fact, there is a delay of five years, but on deducting the days of Covid pandemic, the delay is of 1473 days. However, the same has not been considered by the learned Trial Court. It appears that in the concluding Paragraph of the impugned order, the learned Trial Court observed that the MJC has already been registered and the parties are at liberty to lead evidence for restoration of the Special Civil Suit No. 956/2011. It also appears from the record that one pursis is filed by the Applicant stating therein that the Applicant has already filed an Application for condonation of delay and relied on several documents. The reason for the delay and restoration of the Suit are identical one, therefore, the documents were filed on record along with the Application for restoration on affidavit be considered for restoration application. It is also stated in the said Pursis that the Applicant does not want to lead any further evidence on the point of Restoration Application. It appears from the Roznama placed on record (Page 100) that the learned Trial Court, on the same day, posted the matter on

09/10/2021 for evidence of the N.A. On 09/10/2021, Counsel for the Applicant was present, however, Counsel for N.A. was not present and the matter was posted on 12/10/2021. On 12/10/2021, the matter was kept for arguments on 20/10/2021. On 20/10/2021, the impugned order came to be passed. In the order dated 04/10/2021 passed on the Application for condonation of delay i.e. M.J.C. No. 196/2021, the same MJC number is appearing in the order dated 20/10/2021 for restoration. In fact, after the delay in filing the Restoration Application has been condoned, the Application for restoration ought to have been registered separately, however, it appears that there is neither separate registration number to the Restoration Application nor any notice of such registration of the Application for restoration was issued to N.A. Though the learned Trial Court observed in the impugned order that it was the duty casted upon both the Plaintiff and his Counsel to remain present and conduct the matter by taking due steps, however, it further observed that the fact of dismissal of the Suit was detected by the Plaintiff only after his son obtained the certified copy. Even some facts are not properly appreciated by the learned Trial Court about the business of tourism. The fact remains that without registration of the

Application for restoration separately, the order came to be passed by the learned Trial Court thereby depriving the N.A. i.e. the present Petitioner from effectively participating or opposing the Application for restoration. The delay of 3 years and 10 months alleged to have been caused due to non-intimation by the Counsel for the Applicant – Plaintiff. However, there is nothing on record to show as to what diligence he has shown to get the status of his Suit from his Counsel. There is nothing also on record what steps he has taken against his Counsel.

(6) In my considered opinion, the delay caused in filing the Application for restoration was huge one. The Applicant has not entered into the witness box in support of his contention of non-intimation by his Counsel or about his physical disablement or heart disease. Considering huge delay in filing application for restoration of suit that is around 3 years and 10 months delay. It was expected from learned Joint Civil Judge Senior Division to direct the applicants to lead evidence and if he refuse to lead evidence on document filed by him, it ought to have been held that he failed to establish his claim. Unless opportunity to controvert it, the document cannot be held as proved by the applicant. The Court has to administer the law and ensure

evenness and impartiality. There is serious error also on the part of the learned Joint Civil Judge Senior Division that without registering application of restoration separately in the same MJC order of restoration passed without issuing notices to the present petitioner i.e. N.A. Learned Civil Judge Senior Division failed to discharge his duties by depriving N.A. to participate and to defend the proceeding. As such both order dated 04/10/2021 and 20/10/2021 in MJC No. 196/2021 are liable to be quashed and set aside. True it is that he is old aged person and having some ailments, however, there is no opportunity granted to the Defendants to counter those documents or the submissions made by the Applicant for Application for condonation of delay or restoration.

(7) As such, I proceed to pass the following order :

ORDER

- (i) Writ Petition is allowed.
- (ii) The order dated 04/10/2021 below Exh.1 in MJC No. 196/2021 and order dated 20/10/2021, allegedly passed below Exh. 1 in MJC No. 196/2021, by learned 18th Joint Civil Judge Senior Division, Nagpur, is hereby quashed and set aside.

(iii) Considering the huge delay, the learned 18th Joint Civil Judge Senior Division, Nagpur, is hereby directed to direct the parties to lead evidence. After passing order below Exh.1 in MJC No. 196/2021, if delay would be condoned, direct the Registry to register MJC separately for restoration and respondent be served with the notice.

(iv) Learned 18th Joint Civil Judge Senior Division, Nagpur, is further directed to dispose of MJC No. 196/2021, within two months and if delay is condoned, separately registered MJC for restoration be disposed of within two months thereafter.

(v) Till then parties shall maintain status quo as on today.

Pending applications, if any, shall stand disposed of.

(SMT. M.S. JAWALKAR, J.)

ANSARI/Jayashree..