

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1988 OF 1996

HIRALAL SHANKAR MALI, DIED
THROUGH LR'S

PETITIONERS

VERSUS

RAMANLAL KISANDAS WANI, DIED
THROUGH LR'S

RESPONDENTS

Mr.A.G.Magare, Advocate for the petitioners.

Mr.V.P.Raje, Advocate for respondent Nos.1A to 1C.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 08/01/2015

ORAL JUDGMENT :

1. This petition was filed in the year 1990 and was registered as WP No.3417/1990. On transfer, it is registered as W.P.No.1988/1996.

2. By order dated 31/07/1990, this petition was admitted (Coram : Dudhat, J.). Interim relief in terms of prayer clause “b” was granted. Prayer clause “b” of the petition reads as under :-

“Pending the hearing and final disposal of this petition, the execution of decree for possession of the suit premises passed by the learned Civil Judge, J.D. Taloda, District Dhule, in Regular Civil Suit No.19 of 1987, be kindly stayed by this Honourable Court.”

3. RCS No.19/1987 was filed by the sole respondent Ramanlal

Kisandas Wani. This Court had noted on 23/06/2004 that the sole respondent had passed away. The petition stood abated by order dated 28/06/2004 (Coram : B.H.Marlapalle, J.). By an order dated 25/03/2011 on CA No.3630/2011, the legal heirs of the sole respondent were permitted to be brought on record. On CA No.13105/2008, the delay was condoned and this petition was restored.

4. Judgment dated 07/12/1988 was delivered in RCS No.19/1987. A Civil Appeal was preferred by the respondent alongwith Misc. Civil Application on 28/07/1989. Delay of 7 months and 21 days was sought to be condoned with a prayer that the civil appeal be registered.

5. By the impugned order dated 29/06/1990, Misc.Civil Application No.63/1989 was rejected and the delay of 7 months and 21 days was declined to be condoned on account of lack of justifiable and reasonable grounds.

6. The petitioners have vehemently contended that the delay caused was neither deliberate nor intentional. No laches could be attributed to the conduct of the petitioners. The interest of the

petitioners is still alive and they pray for condonation of delay so as to be able to have their civil appeal lodged in 1989, adjudicated on its own merits. Doors of litigation have been closed upon them since the impugned judgment and decree was practically ex-parte. It is, therefore, prayed that this petition be allowed.

7. Learned Advocate for the respondents has vehemently opposed the petition. Contention is that the original defendants allowed the Trial Court to proceed ex-parte. After watching the matter and only because the suit was decreed that the defendants have suddenly shown interest in the proceedings. The delay was deliberate. Grounds set out in the application were not established with proper evidence, and therefore the impugned order has rightly been passed and calls for no interference.

8. I have considered the submissions of the litigating parties. Issue was of a delay of 7 months and 21 days. The original defendant was an aged person and was suffering from various ailments. It was stated in the application for condonation of delay that he was suffering from Rheumatism and had painful joints, which had practically immobilized him.

9. When the original plaintiff tried to recover possession on the

strength of the judgment and decree, the petitioner realized that the judgment was ex-parte. Despite his physical disabilities and Rheumatism, which have immobilized him, he made an effort to file a civil appeal, which was delayed by 7 months and 21 days.

10. I do not find from the record that laches have been attributed to the conduct of the original defendant, who has subsequently passed away. The delay of 7 months and 21 days cannot be said to be inordinate. The petitioners did not derive any benefit on account of the said delay. The Apex Court in the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], has dealt with the issue of delay.

11. The Honourable Apex Court in the case of Collector, Land Acquisition Anantnag (supra) has laid down guidelines while dealing with the application for condonation of delay, which are as follows :-

" 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

12. In the peculiar facts of this case, I therefore find that the learned Appeal Court had adopted a pedantic approach and has refused condonation of delay of 7 months and 21 days. It is an irony that as a consequence of refusal to condone the delay, this petition was filed and which has been pending in this Court for the past 25 years.

13. In the light of the above, I find this case to be fit for exercising my writ and supervisory jurisdiction. The impugned order dated 29/06/1990 is quashed and set aside. Misc.Civil Application

No.63/1989 stands allowed. The concerned Appeal Court is directed to register the Civil Appeal lodged by the original defendant and decide the same as expeditiously as possible and preferably on or before 29/05/2015. Taking into account the fact that the original plaintiff as well as the defendant have passed away, the petitioners herein shall initiate appropriate steps for bringing the LR's of the appellant and the respondent on record before the Appeal Court.

14. Writ petition is, accordingly, allowed. Rule is therefore made absolute. As, interim relief in terms of prayer clause "b" is granted at the time of admitting the matter, it shall continue till the disposal of the appeal, before the Appeal Court.

15. Learned Advocates jointly submit that the Appeal will now be registered with the Additional District Judge at Shahada, Dist. Nandurbar in view of the subsequent bifurcation of jurisdiction and the litigating parties shall cooperate for its expeditious disposal as ordered above.

(RAVINDRA V. GHUGE, J.)