

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

CIVIL APPLICATION NO.248/2014
IN
CIVIL APPLICATION NO.1584 /2007
IN
SECOND APPEAL (ST) NO.15444/2007

Sham Laxman Tamhankar

...Applicant

V/s.

Madhukar Ramchandra Date & Ors.

...Respondents

Mr. Pradip Patole i/b. S. S. Patwardhan for the Applicant.

Mr. S. P. Raje Pandhare i/b. Ajay A. Joshi for the Respondent Nos.2B to 2D.

CORAM: K.K. TATED, J.
DATED : AUGUST 25, 2015

PC. :

1. Heard the learned counsel for the parties. This Application is made by the Plaintiff for restoration of the Civil Application No.1584/2007 which was dismissed in view of conditional order dated 30/11/2007 passed by this court (Coram : A. S. Oka, J.).

2. In the present proceedings, the Applicant Plaintiff filed Special Civil Suit No. 432/1989 in the court of Civil Judge, Junior Division Pandharpur for recovery of sum of Rs.1,25,700/- from Respondent Defendant, which was decreed on 26/03/1993. Being aggrieved by the said decree, the Respondent Defendant No.1, 2A to 2C preferred Civil Appeal No.80/2001 which was allowed vide decree dated 29/04/2006.

Thereafter the Applicant Plaintiff preferred the present Second Appeal. As there was a delay of 285 days in filing the Second Appeal, the Plaintiff preferred Civil Application No.1584/2007 for condonation of delay, wherein a conditional order was passed on 30/11/2007 directing the Applicant to serve the Respondent by private notice and file an Affidavit of service in addition to usual mode of service. As the Applicant failed to serve the Respondent by private notice and file an Affidavit of service to that effect, the Second Appeal as well as Civil Application stood rejected. Hence, the present Civil Application.

3. Before considering the present Civil Application, it is to be noted that the Civil Application is affirmed by one Sham Laxman Tamhankar, Clerk of the Advocate for the Applicant. Even this Application is not affirmed by the Plaintiff. The affirmation clause of the Civil Application reads thus:

“VERIFICATION

I, Shri Sham Laxman Tamhankar, Age 66 adult, clerk to the advocate for the Applicant, do hereby state on solemn affirmation that the contents of para no.1 to 4 herein above are true and correct to the best of my faith, information and belief, and in witness whereof, I have put my signature as hereunder.

*Solemnly affirmed at Mumbai.
Dated this 7th day of January 2012.*

*Deponent
Before me*

Advocate for Applicant”

4. There is delay of 4 years and 21 days in preferring the Civil Application for setting aside the conditional order dated 30/11/2007.

5. The learned counsel for the Applicant submits that the delay is on account of the circumstances beyond control of the Applicant. The Applicant was under bona fide impression that the present proceedings is pending for hearing. He submits that the Applicant learnt about dismissal of the appeal only in Christmas Vacation of 2011. Thereafter the Applicant approached this court immediately.

6. The learned counsel for the Applicant submits that even their Advocate learnt about dismissal of the present proceedings during Winter Vacation of 2011 when the Advocate was taking a general survey of the status of the proceedings in his office. The learned counsel for the Applicant submits that they have good chance of success in the present proceedings. He submits that if delay is not condoned and matter is not restored to file, irreparable loss and injury will be caused to the Applicant. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing the present Civil Application for restoration of the Civil Application No.1584/2007 (for condonation of delay) along the Second Appeal (ST) No.15444/2007.

7. It is to be noted that in the present proceedings there is delay on the part of the Applicant to file the Second Appeal. Therefore, the Applicant preferred Civil Application No.1584/2007 for condonation of 285 days delay wherein, this court passed order on 30/11/2007 directing the Applicant to serve the Respondent by private notice and file Affidavit of service on or before the returnable date. The Applicant, in his Application, nowhere stated as to when and how they forwarded private notice to the Respondents either by registered post and/or

courier and/or by hand delivery. Apart from that, the Applicant has not shown any reason as to why he waited till 2012 to file the present Civil Application i.e. for more than 4 years. Nowhere it is stated in the Civil Application whether the Applicant has made any enquiry during this period with his Advocate about the matter. Apart from that, in paragraph 2 and 3 of the Civil Application, the Applicant has not shown any sufficient cause for inordinate delay of more than 4 years.

8. Considering the submissions made by the learned counsel for the Applicant and the reasons disclosed in the Civil Application, I am of the opinion that the Applicant has not shown sufficient cause for allowing the Civil Application . Hence, the Civil Application stands rejected.

(K.K. TATED, J.)