

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO. 370 OF 2015

Sagar Avinash @ Ajinath Chavhan & Anr. .. Petitioners
vs.
Keshav Ambu Chavhan & Ors. .. Respondents

Mr. Tushar Sonawane for Petitioners.

CORAM : M. S. SONAK, J.
DATE: 18 MARCH 2015

P.C. :-

1] This petition questions order dated 24 February 2014, by which delay in instituting appeal against the judgment and decree of partition made on 6 October 2008 has been condoned.

2] The impugned order, records that there is no evidence of service of suit summons upon the original defendant nos. 4 and 7 (appellants before the appeal court). Further, summons was served upon the original defendant no. 5, but the said defendant and the appellants before the appeal court have been residing separately for more than 35 years. Ultimately, it is recorded that the appellants before the appeal court acquired knowledge about the decree of partition on 1 October 2012, when the said decree was put into execution. Within a reasonable period from the date of such knowledge, the appeal came to be instituted.

3] The learned counsel for the petitioners submits that the delay in the present case is almost four years four months. In such circumstances, the learned counsel contends that the same ought not to have been condoned.

4] Condonation of delay is a matter of discretion of the Court, as has been held by the Apex Court in the case of *N. Balakrishnan vs. M. Krishnamurthy*¹. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criteria. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally a superior court should not disturb such finding, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. The Hon'ble Apex Court proceeds to observe that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the doors against him. If the explanation offered, does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor.

1 (1998) 7 SCC 123

5] Applying the aforesaid principles, to the facts of the present case, there is no case made out for interference with the impugned order. This is not a case where the discretion has been exercised on wholly untenable grounds or the exercise of discretion is arbitrary and perverse.

6] This petition is accordingly dismissed.

7] However, the appeal court is directed to dispose of the appeal as expeditiously as possible and in any case within a period of six months from the date of production of authenticated copy of this order.

8] All parties to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)