

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

WRIT PETITION NO.2675 OF 2015

Shri. Gangadhar Tukaram Gaikwad

.. Petitioner

Versus

Sou. Vimal Vadprakash Goyal (Agarwal) and others .. Respondents

Mr. T. D. Deshmukh a/w Mr. Samrat Shinde, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 20th AUGUST, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 18.12.2014 passed by the Extra Joint Ad-hoc District Judge-1, Pune, by which order the application being Civil Misc. Application No.690 of 2012 seeking condonation of delay of 1 year and 10 months in filing the Appeal came to be rejected.

2. The suit in question being Special Civil Suit No.26 of 2002 has been decreed against the Petitioner and his two sons who are the Respondent Nos.2 and 3 on 19.04.2010. The Petitioner thereafter sought to challenge the said decree by filing an Appeal. In view of the fact that there was delay in filing the Appeal that the Petitioner filed the instant Civil Misc. Application No.690 of 2014. In the said application, it was the

case of the Petitioner that the Respondent Nos.2 and 3 herein were looking after the litigation and hence, he was not aware of the progress of the suit in question. It was further his case that his grandson informed him on telephone that the Court Bailiff had come to the house and thereafter he made inquiries with the advocate when he came to know that the suit in question was decreed on 19.04.2010. It was the case of the Petitioner that the relations with his sons are strained and therefore, his sons i.e. Respondent Nos.3 and 4 did not inform him about the developments in the suit. The said application filed by the Petitioner was replied to on behalf of the original Plaintiff. The original Plaintiff questioned the reasons mentioned in the application.

3. The Trial Court tested the case of the Petitioner and having regard to the material on record and especially the evidence which was led in support, the Trial Court observed that the evidence was not trustworthy and acceptable. The Trial Court has alluded to the fact that the Applicant was not aware as to the date when he applied for certified copies and when he received the certified copies. The Trial Court also alluded to the fact that the grandson of the Petitioner had informed him about the Bailiff coming to serve the Court notice on him in respect of the decree being passed in the said suit. The Trial Court observed that though the Applicant claims that he has strained relations with his sons the fact

that his grandson informed him about the visit of the Bailiff belies the said case of the Applicant of his relations being strained with his sons. The Lower Appellate Court has gone to the extent of observing that the Respondent Nos.3 and 4 who are sons of the Applicant are in collusion with him qua the original Plaintiff. It is well settled by the judgments of this Court as well as the Apex Court that it is not the extent of the delay but the cause shown therefor is to be taken into consideration. In the instant case, the case of the Petitioner/original Defendant hardly inspires confidence. In my view, no case for interference in the Writ Jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]