

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1656 OF 2012
WITH
CIVIL APPLICATION NO. 65 OF 2015
AND
CIVIL APPLICATION NO. 66 OF 2015

Milind Govind Shinde,
since deceased through their legal heirs
Smt. Manjusha M. Shinde (Patil) & Ors. .. Petitioners
vs.
Rakamabai Yashwant Yadav,
deceased through her legal heirs
Vishnu Yashwant Yadav & Ors. ... Respondents

Mr. Ajit J. Kenjale for Petitioners.
Mr. Sagar Mane h/f. Mr. N. V. Bandiwadekar for Respondent Nos.
1(a) to 1(g).

CORAM : M. S. SONAK, J.
DATE: 29 APRIL 2015

P.C. :-

1] Rule. With the consent of and at the request of the learned
counsels for the parties, Rule is made returnable forthwith.

2] This petition challenges order dated 21 September 2011 by
which the Ad-hoc District Judge – 1, Karad, has refused to condone
the delay in seeking restoration of Regular Civil Appeal No. 563 of
2000 which came to be dismissed for want of prosecution on 20
July 2004.

3] Restoration, in the present case was applied for on 1 January 2008 i.e. after delay of about three years and five months. The learned District Judge has come to the conclusion that such delay is inordinate and no sufficient cause was shown for condoning the same. The learned counsel for the respondent nos. 1(a) to 1(g) has supported the impugned order by submitting that the same is based upon material on record and there is no perversity whatsoever in the approach of the learned District Judge.

4] The circumstances of the case, and the offer by the petitioners to pay costs of Rs.75,000/- (Rupees Seventy Five Thousand), however warrant interference with the impugned order. The appeal in the present case came to be dismissed for failure to deposit the amounts towards preparation of paper book. It is the case of the petitioner no. 1 that she was not aware about the legal proceedings, particularly since her husband was looking into the matter. Further, it is the case of the petitioner no. 1 that her husband was seriously ill and has ultimately succumbed to blood cancer. It is the case of the petitioner no. 1 that she got knowledge of the dismissal of the appeal, only when notice with regard to the measurement of the suit property was received on 19 December 2007. On the next day, i.e. on 20 December 2007, certified copies were applied for. The period between 23 December 2007 and 30

December 2007 were Court vacations and immediately thereafter i.e. on 1 January 2008, application for restoration came to be made.

5] Along with this petition, necessary affidavit as well as medical certificate has been produced which indeed indicates that the late husband of the petitioner no. 1 was suffering from blood cancer and ultimately and unfortunately succumbed to the same. The explanation that the petitioner no. 1 got knowledge of the dismissal of the Civil Appeal, when she received notice for measurement, is also not an explanation which can be styled either untrue or malafide. In the matters of condonation of delay, it is not always the length of delay that is of utmost importance but rather, what is important is the quality of the explanation. There may be some lapse on the part of the parties, however, if the lapse is not malafide or for the purposes of deliberately prolonging the proceedings, the same should normally not come in the way of the party seeking an adjudication on merits. No doubt, in the matter of this nature, particularly considering the length of the delay, the respondents, are bound to suffer some prejudice. However, the prejudice is not of such nature as cannot be compensated by substantial costs. For this purpose, the petitioners in the present case have offered to pay costs of Rs.75,000/-.

6] Therefore, upon taking into consideration cumulatively the aforesaid circumstances as well as offer to pay costs, the impugned order is set aside. Further, since the application seeking condonation of delay also cites the very same reasons in the matter of failure to take steps to deposit fees towards preparation of paper book, no useful purpose would be served by permitting order dated 20 July 2004, dismissing Regular Civil Appeal No. 563 of 2000 for default, is remain to stand. Accordingly, in exercise of jurisdiction under Article 227 of the Constitution, for the same reasons, which obtained in the matter of condonation of delay, the order dated 20 July 2004 dismissing Regular Civil Appeal No. 563 of 2000 for default is also set aside.

7] In the result, orders dated 21 September 2011 and 20 July 2004 are set aside. Regular Civil Appeal No. 563 of 2000 is restored to the file of the learned Ad-hoc District Judge – 1 Karad. All this is subject to the petitioners, consistent with their offer, deposit the amount of Rs.75,000/- (Rupees Seventy Five Thousand) within a period of six weeks from today in the Appeal Court, where Regular Civil Appeal No. 563 of 2000 is now pending. Upon deposit, the legal heirs of Rakamabai Yashwant Yadav, who are stated to be contesting respondents and who had obtained the impugned judgment and decree, be permitted to withdraw the said amount unconditionally.

8] Further, the learned District Judge taking up a Regular Civil Appeal No. 563 of 2000 is directed to dispose of the same as expeditiously as possible and in any case within a period of one year from today.

9] It is made clear that this Court has not gone into the merits and demerits of the issues involved in Regular Civil Appeal No. 563 of 2000 and all contentions of all parties in this regard are left open for decision by the learned District Judge taking up the Appeal.

10] All concerned to act on basis of an authenticated copy of this order.

11] Rule is made absolute to the aforesaid extent. There shall be no separate order as to costs in this petition.

12] Civil Applications do not survive and are disposed of as such.

(M. S. SONAK, J.)