

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4932 OF 2015

Ramsagar Shivmurti Yadav.] ... Petitioner

Versus

State of Maharashtra and Ors.] ... Respondents

None for Petitioner.

Mr. Rajesh S. Datar for Respondent No.3.

CORAM :- M. S. SONAK, J.

DATE :- OCTOBER 21, 2015

P. C. :-

1. Neither the petitioner nor his Advocate are present.

2. Normally in the aforesaid circumstances, the matter could have been kept back or posted for dismissal/disposal. However, Mr.Datar, learned Counsel for respondent no.3, points out that the matter was mentioned on 12/10/2015 without notice to the respondent. Mr. Datar however received a message from the Registry that this matter has been mentioned for production. On the said date, Mr. Datar requested his colleague to attend to the matter since the same was to be taken up beyond 5.00 p.m. The said colleague was orally directed to give instructions to the respondents, not to proceed

with the execution proceedings which were scheduled on 13/10/2015.

3. Apart from the aforesaid, from the perusal of the petition, it is clear that the challenge in this petition is to the Judgment and Decree made by the Trial Court on 18/10/2010. As against the said decree, the petitioner has instituted an appeal before the Appeal Court along with application seeking condonation of delay. The delay was not condoned and consequently appeal was dismissed by the Appeal court on 06/03/2013. Against the same, the petitioner instituted a Writ Petition before this Court, which was dismissed on 21/12/2013.

4. Thereafter, the petitioner, on 10/02/2014, filed an application under Order 9 Rule 13 of CPC to set aside the decree dated 18/10/2010 on the ground that the same was made *ex parte*. This was filed after delay of over 3.1/2 years. Such application was obviously not maintainable in terms of the explanation to Order 9 Rule 13 of CPC. The Trial Court declined to condone the delay of 3.1/2 years and in any case, held that such application was not maintainable. The orders of the Trial Court were challenged in Writ Petition No.9132 of 2014 and 9285 of 2015, which were dismissed by this Court on 23/09/2015. In such circumstances, obviously the petitioner cannot be permitted to challenge the decree made by the Trial Court by directly instituting the present petition.

5. Even otherwise, petition is barred by delay and laches. There is already a judicial determination that delay of 368 days in instituting appeal against this decree was not satisfactorily explained. There is also judicial determination that delay of over 3.1/2 years in seeking to set aside the decree dated 18/10/2010 is not explained. These facts are relevant in determining whether this petition has been filed within reasonable period. In view of the previous judicial determination, it cannot be said that any sufficient cause has been made out. This is only an additional reason to reject this writ petition.

6. Accordingly, this writ petition is dismissed. Normally, the petition of this nature would warrant imposition of exemplary costs. However, no costs are imposed, as there is no material on record to indicate the financial capacity of the petitioner.

(M. S. SONAK, J.)