

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3676 OF 2011

Sou. Shalan N. Shirtode	..	Petitioner.
V/s.		
Shri Bhagwan A. Chavan		
& Another	..	Respondents.

Mr. Amit Sale, for the Petitioner.

CORAM: M.S.SONAK,J.
DATE : 27th MARCH, 2015.

P.C:-

This Petition challenges the order dated 15th December, 2010 by which the learned Trial Court has declined to condone the delay of 1 year and 46 days on the part of the Petitioner in applying for restoration of the suit which came to be dismissed for default on 16th September, 2006.

2 The learned Civil Judge has basically stated two reasons for declining to condonation of delay -

- (a) that it is not clear as to the precise date upon which the Petitioner obtained knowledge of the order dated 16th September, 2006 dismissing the suit for default; and
- (b) that the certified copy of the order dismissing the suit for default was ready on 13th December, 2007. However, the Petitioner obtained the copy of the same only on 24th December, 2007 and there is no explanation for the delay in the interregnum.

3 Although, none appeared for the Respondents at the stage when the matter is being heard finally, there is an affidavit of Shri Bhagawan A. Chavan – Respondent No.1 on record. In the affidavit, the deponent states that the Petitioner has furnished contradictory answer in the course of her Cross Examination, in the matters of receipt of notices and contacting her Advocate with regard to the progress of the suit. On the said basis, it is urged that the present Petition be dismissed with costs.

4 Having heard the learned Counsel for the Petitioner and perused the record, in my judgment, the impugned order is rather harsh upon the Petitioner and the same deserves to be set aside, subject to payment of costs by the Petitioner. The second reason as aforesaid i.e. - delay of about 11 days in collecting the certified copy of the order by which the suit came to be dismissed by default, is in fact no good reason to deny condonation of delay. The absence of explanation of 11 days in this regard, is really not relevant and in any case, does not constitute the ground to deny condonation of delay.

5 In so far as first ground is concerned, the application seeking condonation of delay and the evidence led in support thereof, does indicate that the Petitioner being an illiterate person, working as maid-servant in the hospital, had serious difficulties in attending the Court proceedings on regular basis. The Petitioner had engaged the services of Advocate to take care of the proceedings.

6 In August, 2007, the Petitioner received a notice from Respondent No.1, demanding partition of the suit property. Thereafter, the Petitioner made enquiries with her Advocate but did not receive any satisfactory response. Therefore, the Petitioner requested some other

Advocate to look into the matter and at this stage, got knowledge of the dismissal of the suit on 16th September, 2006.

7 In my judgment, the explanation furnished is sufficient in the facts and circumstances of the case. The matter of condonation of delay, it is not the law that each days delay is to be explained scrupulously. This is not a case where the Petitioner can be said to have acted malafide or unduly protracted the litigation. In the matters of condonation of delay, there is bound to be some lapse on the part of the parties. However, that by itself has no reason to deny them adjudication of merits. The cause shown in the present case is not malafide nor can it be said that the Petitioner has unduly delayed the matter in order to prejudice the Respondents. Taking into consideration of such aspects, it is fit and proper that the impugned order be set aside, subject to the Petitioner paying costs of Rs.1,500/- (Rupees One thousand five hundred only) to the Respondent. Accordingly, the impugned order is set aside.

8 Rule is made absolute in terms of prayer clause (a). Petitioner shall deposit costs of Rs.1,500/- in the City Civil Court within a period of four weeks from today. Once such costs are deposited, the learned Civil Judge should permits the Respondents to withdraw the same unconditionally.

9 The learned Civil Judge is directed to act on an authenticated copy of this order. Petitioner to appear before the learned Civil Judge on 15th April, 2015 and produce authenticated copy of this order.

(M.S.SONAK,J.)