

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

CIVIL APPLICATION NO.176/2014
IN
REVIEW PETITION (ST) NO.21/2014
IN
CIVIL APPLICATION NO.1689/2010
WITH
CIVIL APPLICATION NO.1690/2010
WITH
SECOND APPEAL (ST) NO.21378/2010
(REJECTED CASE NO.749/2012)

Dhruva Dnyanoba Mohite & Ors.

...Applicants

V/s.

Subhash Mahadeo Mali & Ors.

...Respondents

Mr. R. V. Govilkar i/b. A. B. Tajane for the Applicants.

Mr. Umesh R. Mankapure for the Respondent Nos.1 and 2.

CORAM: K.K. TATED, J.
DATED : SEPTEMBER 3, 2015

PC. :

1. Heard the learned counsel for the parties. The learned counsel for the Respondent Nos.1 and 2 tendered an additional compilation of documents. Same is taken on record and marked "X" for identification.

2. This Application is made by Defendant Nos.5 to 7 for condonation of 1 year and 242 days delay in filing the Review Petition to review the order dated 25/06/2012 passed by this court in Civil Application No.1689/2010 in Second Appeal (ST) No.21378/2010.

3. In the present proceedings, the Applicant preferred Second Appeal (ST) No.21378/2010. There was delay of 445 days in preferring the Second Appeal challenging the judgment and decree dated 06/02/2009 passed by the Appellate Court in Regular Civil Appeal No.261/2002. The Applicant had made a Civil Application for condonation of delay which was decided by this court after hearing both sides by order dated 25/06/2012. For review of the said order dated 25/06/2012, the Applicant filed the present review petition. There is delay in filing the review petition. Hence, the Applicant made the present Civil Application for condonation of 1 year and 242 days delay.

4. The learned counsel for the Applicant submits that the Advocate who appeared on behalf of the Applicant in Civil Application No.1689/2010 in Second Appeal (ST) No.21378/2010 failed and neglected to inform the order dated 25/06/2012 by which this Hon'ble Court pleased to dismiss the Applicant's Application for condonation of delay of 445 days in preferring the Second Appeal. Therefore, there is delay in filing the present review petition. He submits that some of the Respondents preferred another Second Appeal challenging the impugned judgment and decree dated 06/02/2009 passed by the Appellate Court in Regular Civil Appeal No.261/2002. He submits that the said Second Appeal stood rejected for non removal of office objections. Thereafter the Applicant came to know in the last week of December 2002 from the villagers in their village that some order was passed by the High Court against the Applicant. Hence, the Applicant asked his nephew to make an enquiry about the Second Appeal

preferred by them. Hence, the Applicant's nephew contacted their Advocate at Baludi, Tq. Sangola, Dist. Solapur in the first week of January 2013. However, the said Advocate was reluctant to give papers to the Applicant's nephew. After pursuing the matter with the said Advocate, he handed over the papers to the Applicant's nephew. The Applicant is illiterate as well as his nephew also not well-versed with the law, therefore, they contacted their present Advocate. At that time, they learnt that they would have to file a review petition for review of the order dated 25/06/2012 in Civil Application No.1689/2010. He further submits that because of financial crisis, the Applicant could not take immediate decision to file the present review petition. Hence, there is delay in filing the review petition. In support of this contention, the learned counsel for the Applicant relies on paragraph (O), (P), 3 and 5 of the Civil Application, which read thus :

“O. The Applicants state that another identical matter filed by the same Advocate arising out of the same proceeding by other Defendant bearing Second Appeal (ST) No.21378/2010 (rejected case No.749/2012) and Civil Application No.1689/2010 which came to be rejected on 25/06/2012 has not been informed to the concerned parties by the concerned Advocate. The Advocate for the parties in Second Appeal (ST) No.21378/2010 even have not brought to the notice of the Court while passing order on Civil Application No.1689/2010 on 25/06/2012 that on 14/03/2012 the another matter arising out of the same proceeding has been dismissed for non prosecution and hence no contrary order could have been passed in Second Appeal (ST) No.21378/2010.

P The Applicants state that they were never informed by the Advocate that Second Appeal (ST) No.28792/2010 (RC No.852/2012) along with Civil Application No.1876/2010 is dismissed for non prosecution. The Applicants came to know in the

last week of December 2012 from the villagers in their village that some order against the Applicants has been passed by the High Court. Thereafter, the Defendant No.1 sent his nephew for asking the position of the above matter at the house of the advocate for the Applicants at Baludi, Tq. Sangloa, Dist. Solapur in the first week of January 2013. However, the Advocate for the Applicants was very reluctant to give the papers and ultimately after waiting for a period of about 2 hours the papers of both the matters were given to the nephew of the Defendant No.1. The Applicant No.1 is illiterate as well as her nephew is also not well versed. On that day the Advocate for the Applicants has called the Applicants at 6.00 pm in the evening and handed over the papers in the midnight at around 12.00. The Applicants state that no clear instructions as to what happened and what is required to be done has been stated by the Advocate for the Applicants.

3. The Applicants in the month of January 2014 visited one of their relatives at Pandharpur and told him all the story and in turn the said relative suggested the name of Advocate at Mumbai and asked the Applicants to approach to Mumbai again. The Applicants thereafter collected some money required for the expenses for approaching Mumbai and towards the expenses for filing the present proceedings. The Applicants handed over all the papers to their Advocate on 20/02/2014 and Advocate for the Applicants in turn applied on 25/02/2014 for the certified copies in the above matter which have been received on 06/03/2014. Thereafter, the present Application is filed immediately within 30 days from the date of knowledge of the above order dated 14/03/2012.

4.

5. The Applicants for the first time came to know through their newly appointed Advocate that the Second Appeal filed by the Applicants came to be rejected and the Application for condonation of delay was dismissed as well as the stay Application also came to be dismissed as infructuous by order dated 25/06/2012.”

5. The learned counsel for the Applicant submits that in the

interest of justice, this Hon'ble Court be pleased to condone the delay in filing the review petition. He submits that the delay is not intentional but the same was because of the mistake on the part of their advocate who appeared on behalf of them in Civil Application No.1689/2010. He submits that the Applicant has good chance of success. He submits that if the delay is not condoned, irreparable loss, harm and injury will be caused to the Applicant. Hence, in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing the present review petition.

6. On the other hand, the learned counsel for the Respondent No.1 vehemently opposed the Civil Application. He submits that the Applicant failed to show sufficient cause for condonation of inordinate delay of more than 1 year and 242 days in filing the present review petition. He submits that this court passed order on 25/06/2012 in Civil Application No.1689/2010 after hearing both sides. He submits that Applicant learnt about the dismissal of the Civil Application No.1689/2010 in the month of December 2012. The Applicant received the papers from their earlier Advocate in the month of January 2013. Thereafter they appointed the present Advocate to file the review petition on 20/02/2014 and the present Civil Application is filed on 18/04/2014. He submits that though the Applicant learnt about the order passed by this court dated 25/06/2012 in December 2012, they appointed the Advocate on 25/02/2014 to file the present proceedings in this court. There is no explanation for this delay i.e. 14 months in filing the present Civil Application. Hence, there is no question of entertaining the present Civil Application.

7. The learned counsel for the Respondent No.1 submits that in the meantime, the execution proceedings has been started before the Executing Court. He submits that the Tahasildar, Atpadi, Dist. Sangli passed order dated 30/11/2013. In the said order, the Tahasildar specifically recorded that both the parties agreed for partition and handed over possession as per the statements prepared by the Authority. He further submits that thereafter the Revenue Authority handed over the possession to the respective parties as per their share on 03/01/2014. In support of this contention, the Respondent No.1 relies on receipt dated 03/01/2014 executed by the parties.

8. The learned counsel for the Respondent No.1 submits that after getting possession of the suit property in execution, the Respondent No.1 executed a registered sale deed in favour of a third party on 07/01/2014 and handed over vacant and peaceful possession. He submits that the Applicant never objected either before the Tahasildar and/or before the Revenue Authority at the time of handing over possession of the suit property. This itself shows that though the Applicant had knowledge about dismissal of their Second Appeal, they failed and neglected to take immediate steps for filing the present review petition. There is no explanation for inordinate delay of more than 1 year and 242 days. Hence, the Civil Application required to be dismissed with costs.

9. I heard both sides at length. In the present Civil Application, the Applicant has tried to make out a case for condonation of delay on the ground that their Advocate failed and neglected to inform them about the impugned order dated 25/06/2012 passed in Civil Application

No.1689/2010. It is to be noted that neither in the entire Civil Application the Applicant has disclosed the name of the Advocate nor any communication made by him, with them, for making any enquiry about their matter. Though the Applicant learnt about dismissal of Civil Application No.1689/2010 in December 2012, they made the present Civil Application for condonation of delay for filing review petition on 18/04/2014 i.e. after more than 14 months. There is no explanation in the Civil Application for this 14 months delay.

10. Apart from the above mentioned facts, the Executing Court executed the decree and Respondent No.1 received possession of his share on 03/01/2014. Thereafter immediately, Respondent No.1 sold his share in the suit property to a third party by a registered sale deed dated 07/01/2014 and handed over possession to the purchaser.

11. Considering the submission made by the learned counsel for the Applicant, the averments made in the Civil Application and the subsequent facts about the execution of the decree, I do not find any substance in the Civil Application to condone the delay of more than 1 years 242 days. Hence, the Civil Application stands rejected.

12. Consequently, the Review Petition stands rejected.

13. In view thereof, pending Civil Application, if any, stand dismissed as infructuous.

(K.K. TATED, J.)