

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6484 OF 2014

Kisan Maruti More	..	Petitioner
VS.		
Chandrakant Laxman Shirole	..	Respondent

Mr. Rahul S. Kadam for Petitioner.

CORAM : M. S. SONAK, J.
DATE : 19 AUGUST 2015

P.C. :-

1] This petition challenges order dated 18 March 2014 by which the District Judge, Pune (Appeal Court) has declined to condone delay of 3 years 3 months and 6 days in instituting an appeal against the judgment and decree dated 25 March 2009 made by the Trial Court in Civil Suit No. 180 of 2003.

2] As noted in the impugned order, the only reason set out in the application seeking condonation of delay was that the petitioner was unaware of the decree dated 25 March 2009 and obtained knowledge about the same on 7 July 2012, upon being served with the summons in execution proceedings no. 29 of 2010.

3] The record indicates that the Civil Suit No. 180 of 2003 was decreed on 25 March 2009. The summons in the suit was duly

served upon the petitioner, who filed necessary written statement. Thereafter however, even though an Advocate was engaged by the petitioner, there was no real participation in the suit as a result of which, the suit came to be decreed on 25 March 2009.

4] Mr. Kadam, the learned counsel for the petitioner submitted that the petitioner had engaged an Advocate who had advised the petitioner that his presence is not required before the Trial Court and that the Advocate would ensure that the petitioner succeeds in the matter. In the course of the evidence led by and on behalf of the petitioner, the petitioner has stated that he does not know anything about the matter and that he had engaged an Advocate, who had told him that his presence will not be required before the Trial Court.

5] The Appeal Court, upon consideration of the evidence on record has rightly concluded that the petitioner has been throughout negligent in the matter. It is not sufficient for a party to take up a plea that Advocate had been engaged in the matter and that said Advocate had instructed him not to attend the proceedings before the Trial Court. Such a plea, cannot readily be accepted particularly in the context of the quality of evidence led by the petitioner before the Court. It is also the duty of the petitioner to

pursue the matter and in case, the petitioner is of the opinion that his Advocate is not discharging duties appropriately then to either change the Advocate or to take such other steps as he may be advised. In this case the petitioner has virtually abandoned the proceedings and chosen to institute Appeal after inordinate delay of 3 years 3 months and 6 days only upon being served with the summons in the execution proceedings. There is absolutely no cause shown for such inordinate delay. In fact, the petitioner has been benefited by the delay in as much as the petitioner has continued in possession of the suit premises, notwithstanding the decree for eviction made on 25 March 2009. Although it is true that plea for condonation of delay has to be liberally construed, this is a case where no sufficient cause has been shown. There is no jurisdictional error in the making of the impugned order.

6] The submission of Mr. Kadam that substantial costs be imposed upon the petitioner but the petitioner be offered an opportunity to pursue his Appeal, cannot be accepted at this stage. As noted earlier, even the decree dated 25 March 2009 was on account of non participation by the petitioner. In these circumstances, to direct the hearing of the Appeal on merits would only be an exercise to delay the eviction proceedings. In any case, no sufficient cause has been shown for inordinate delay of 3 years 3

months and 6 days. The petitioner, cannot take any advantage of his own negligence to plead that he had no knowledge about the decree made.

7] Accordingly, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka