

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7168 OF 2014

Anil Shankar Gogate & Ors.	..	Petitioners
VS.		
Mandakini S. Pednekar	..	Respondent

Mr. Haresh J. Lulia for Petitioners.

CORAM : M. S. SONAK, J.
DATE: 30 JUNE 2015

P.C. :-

1] This petition challenges orders dated 7 August 2009 and 19 March 2014 made by the Small Causes Court (trial Court) and the appellate bench of the Small Causes Court (appeal Court) declining to condone the delay and consequently setting aside the exparte judgment and decree dated 4 October 2005 made by the trial Court.

2] The learned counsel for the petitioners contended that the suit property was covered by the Slum Act and therefore, the decree made is incompetent. The learned counsel for the petitioners further contended that sufficient cause was shown for the delay involved and further, the roznama indicates that both the petitioners as well as the respondents were absent on several dates, but the trial Court chose to issue notice for appearance on 23 January 2004 to the

respondents (plaintiffs in the suit) but not to the petitioners. All this according to the learned counsel for the petitioners vitiates the impugned orders which are required to be interfered with by this Court in these proceedings.

3] Having considered the submissions made by the learned counsel for the petitioners and perused the record, in my judgment, no case is made out to interfere with the impugned order. The record indicates that the ex parte decree was made on 4 October 2005. Record further indicates that the petitioners herein had virtually not contested the proceedings either by appearing with diligence or filing their defence in form of a written statement. The application for setting aside was made after a period of almost three years i.e. 17 October 2008. The reason set out in the said application was that the petitioners father was pursuing the matter and thereafter, it is his mother who was pursuing the matter. Another reason is that the Advocate engaged by the petitioners, did not keep the petitioners posted of the progress of the proceedings.

4] The records indicates that the petitioners father expired some time in the year 1995. Accordingly, such circumstance is clearly irrelevant in the context of the case put up by the petitioners. The petitioners mother expired on 6 May 2005, however the petitioners

who were her legal heirs were already on record. The blame upon the Advocate Pathare is also by no means substantiated. There is no material to indicate that the petitioners ever took any interest in the proceedings or made any efforts to know about the progress of the proceedings. Circumstance that notice was issued only to the original plaintiff on 23 January 2004, is by no means determinative. The record indicates that even prior to the said date, there was really no participation by the petitioners in the proceedings.

5] The Small Causes Court as well as the appeal Court based upon the material on record have declined to condone the delay or set aside the *ex parte* decree. The issue with regard to applicability of the Slum Act, is not a pure issue of law. The same is at the highest mixed issue of law and fact. In the absence of placement of any material by the petitioners, it would not be said that there was any obligation on the part of the two Courts to go into such issue.

6] Accordingly, the two impugned orders cannot be said to be vitiated by any jurisdictional errors or perversity. This petition is therefore dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)