

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1935 OF 2014
WITH
CIVIL APPLICATION NO.1938 OF 2014
WITH
CIVIL APPLICATION NO.2081 OF 2014
IN
WRIT PETITION NO. 1797 OF 1995

Shankar K. Thakur and anr. .. Applicants.

vs.

Parvatibai M. Gavari, since deceased
through Lrs & anr. .. Respondents.

WITH

CIVIL APPLICATION NO.1936 OF 2014
IN

WRIT PETITION NO.1797 OF 1995

Smt. Kunda C. Thakur and anr. .. Applicants

In the matter of

Shankar K. Thakur and anr. .. Petitioners.

vs.

Parvatibai M. Gavari, since deceased
through Lrs. & ors. .. Respondents.

Mr. Milind Sathaye for the Applicants/Petitioners in all Civil Applications.

Mr. S.S. Deshmukh a/w. Mr. Amey Deshpande for Respondent No.1A.

Ms P.S. Cardozo, AGP for Respondent No.2-State .

CORAM : M. S. SONAK, J.
DATE : 27 JANUARY, 2015

P.C. :-

1] The aforesaid civil applications can be conveniently disposed of by common order.

2] Heard learned counsel for the parties and perused the records as are available on file.

3] Civil Application No. 1935 of 2014 is for recall of the order dated 26 March 2008 dismissing the Writ Petition No. 1797 of 1995 for default and restoration of the same. Civil Application No.1936 of 2014 seeks condonation of delay and leave to bring on record the heirs of deceased petitioner No.2. Civil Application No.1938 of 2014 seeks condonation of delay and leave to bring on record the heir of deceased respondent No.1. Civil Application No.2081 of 2014 seeks leave to implead the subsequent purchaser as a party respondent to the main petition.

4] By order dated 26 March 2008, this petition was dismissed for default. In the civil applications, it has been stated that 7/12 extracts in respect of suit property, right upto the year 2013 continued to indicate the names of the petitioners. For this reason, the petitioners were under bona fide impression that their petition is pending and the interim orders granted in their favour, in operation.

5] In May 2014, the petitioners noticed that the name of legal heir of respondent No.1 appears in 7/12 extract. Further in August

2014 or thereabouts, it was noticed that name of subsequent purchaser, i.e., purchaser from the legal heir of respondent No.1 appears in the 7/12 extract.

6] The aforesaid, prompted the petitioners to make enquiries and it is at this stage, that is some time in July 2014, it was realized that this petition has been dismissed for default wayback in 26 March 2008. The petitioners have purported to place the blame upon their advocate. But apart from the same, the petitioners have pointed out that in July 2008 and November 2010, the petitioner No.1 underwent total knee replacement surgeries. Further petitioner No.2 expired on 12 January 2009, after a prolonged illness. All these factors, disabled the petitioners from taking out civil applications for restoration and other reliefs. It was emphasized that since 7/12 extracts continued to indicate the names of the petitioners at least upto the year 2013, the petitioners were under *bona fide* impression that the petition continued to pending in this Court and the interim reliefs granted therein were operative.

7] Mr. Deshmukh, learned counsel appearing for Mr. Raghu Jadhav, legal heir of respondent No.1, submitted that the reasons set out in the civil applications do not constitute sufficient cause.

From overall conduct of the petitioners, it is evident that they were grossly negligent in the matter of pursuing the present proceedings. Learned counsel pointed out that it is futile to blame the advocate, when in fact the petitioners have not demonstrated the steps that they took in the matter of prosecution of the petition. Learned counsel also pointed out that the health ailments referred to, were not such, as would entitle the petitioners to totally neglect the prosecution, of the case. Ultimately, learned counsel pointed out that the legal heir of respondent No.1, in 23 July 2014, after obtaining necessary permissions from the Authority, has transferred the suit property in favour of a Tribal. Thus, the third party rights have already been created, which at this stage, would be inequitable to disturb. Learned counsel pointed out that the petitioners are not only guilty of delay but also of laches. For all these reasons, it was submitted that Writ Petition No. 1797 of 1995 be not restored.

8] The rival contentions, now fall for my determination.

9] No doubt, there has been some lapse on the part of the petitioners in the matter of prosecution of present petition. Learned counsel for the legal heir of respondent No.1 is right in his

submission that the petitioners cannot rest content by laying any blame upon their previous advocate. Considering the time lag, it was also the duty of the petitioners to make enquiries with regard to the progress of the petition.

10] In spite of lapse of time as aforesaid, the circumstance that names of the petitioners continued in 7/12 extracts right upto the year 2013, cannot be ignored. The petitioners have stated that the change came to their notice only in the month of May 2014. Within a reasonable period thereafter, the present civil applications have been filed. Further, it is possible that the lapse at least to certain extent was on account of ailments like total knee replacement or the demise of petitioner No.2.

11] Therefore, taking into overall view of the matter, I am inclined to restore the petition, i.e., Writ Petition No. 1797 of 1995, subject to the petitioners paying substantial costs in favour of Mr. Raghu B. Jadhav, proposed legal heir of respondent No.1 in Civil Application No.1938 of 2014. Such costs are quantified at Rs.50,000/- (Rs. Fifty Thousand only). In case, the same are paid within a period of four weeks from today, then the Civil Application No.1935 of 2014 shall stand allowed and Writ Petition No.1797 of 1995 shall stand

restored to the file. Consequent upon such restoration, leave is granted to bring on record the legal heirs of petitioner No.2 as well as legal heir of respondent No.1. Incidentally, costs shall have to be paid to respondent No.1A, who has already been impleaded in these civil applications.

12] Similarly, in the event of restoration, leave is also granted to implead the proposed respondent No.3 in Civil Application No. 2081 of 2014 as party respondent to the main petition.

13] Accordingly, subject to payment of costs of Rs.50,000/- to Mr.Raghu B. Jadhav - respondent No.1A in Civil Application No.1938 of 2014, all the aforesaid civil applications stand allowed in the aforesaid terms. In the event, the costs are not paid within a period of four weeks from today, then all these civil applications shall stand dismissed without further reference to the Court.

14] It is clarified that notwithstanding the restoration of writ petition, the interim orders made therein shall not revive. This is because, the time lag between the date of dismissal of the petition for default, i.e., 26 March 2008 and the order of restoration, is too large. Besides, in the meanwhile the 7/12 extracts have been

amended and in July 2014 the suit property has been transferred by the legal heir of respondent No.1 in favour of a third party. Such transfer is stated to be made after obtaining necessary permissions from the concerned authorities. All these reasons prompt me not to revive the interim relief which was granted during pendency of this petition, even if, consequent upon payment of costs, this petition stands restored to the file.

15] Learned counsel for the petitioners expresses an apprehension that the legal heir of respondent No.1 may decline to accept the costs. In such a situation, it shall be open for the petitioners, within a period of four weeks from today to deposit such costs in the Registry with necessary intimation to the learned counsel for legal heir for respondent No.1. Thereafter, it shall be open to the legal heir of respondent No.1 Mr. Raghu Jadhav to withdraw said amount from the Registry unconditionally.

16] Civil Applications are accordingly, disposed of in the aforesaid terms.

(M. S. SONAK, J.)