

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4547 OF 2015

Madan Dadasaheb Patil ... Petitioner
Vs.
Sarojini Madhukar Desai and another ... Respondents

Mr. Prashant P. Jadhav for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 08, 2016

P.C. :

Heard Mr. Jadhav, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as the defendant No.1, has challenged the judgment and order dated 18.02.2015 passed by the learned District Judge-1, Kolhapur below exhibit-1 in Civil Miscellaneous Application No.181 of 2010. By that order, the learned District Judge rejected the application made by the defendant No.1 for condonation of delay of 3 years, 3 months and 25 days caused in filing Appeal against the judgment and decree dated 12.02.2007 passed by the learned 2nd Joint Civil Judge, Junior Division, Kolhapur in Regular Civil Suit No.413 of 2005.

3. Mr. Jadhav strenuously contended that the defendant No.1 was suffering from brain hemorrhage. He was taking medical treatment. Along with the application for condonation of delay, he has produced certificates of various hospitals. As the defendant No.1 was suffering from brain hemorrhage, the learned trial Judge should have condoned the delay. It is settled principle of law that while considering the

application for condonation of delay, the Court has to adopt liberal approach. He, therefore, submitted that the learned District Judge ought to have condoned the delay by imposing some reasonable cost.

4. I have considered the submissions advanced by Mr. Jadhav. I have also perused the material on record. The Suit instituted by the respondent No.1, hereinafter referred to as plaintiff, was decreed ex-parte against both the defendants. Since there was delay of 3 years, 3 months and 25 days in filing the appeal, defendant No.1 filed application. With the assistance of Mr. Jadhav, I have perused the contents of that application. While rejecting the application, the learned District Judge observed in paragraph 11 that defendant No.1 has produced report dated 26.05.2004 of MRI of his brain issued by Apple Hospital and Research Institute, Kolhapur. The certificate issued by Sanjeev Neuro Surgical Centre, Miraj shows that defendant No.1 was treated as out patient on 22.11.2004. The said certificate mentioned that he was treated there from 25.04.2004 to 04.06.2004.

5. The learned District Judge observed that defendant No.1 has to explain the delay from 16.06.2009 upto filing of the application for condonation of delay. In paragraph 12, the learned District Judge observed that defendant No.1 was serving as Deputy Superintendent of Police till his retirement on 31.06.2009. Perusal of the application shows that there is no explanation from 16.07.2009 when defendant No.1 claims to have acquired knowledge of passing of ex-parte decree. The reliance placed on medical reports is also misconceived as it covers period from April 2004 to June 2004 and the relevant period is from 16.06.2009. That apart, defendant No.1 was also serving as Deputy Superintendent of Police till his retirement on 31.06.2009. In short, there is absolutely no explanation for condoning the delay. In view

thereof as also having regard to the fact that there is delay of 3 years, 3 months and 25 days, I do not find that the learned District Judge has committed any error in rejecting the application. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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