

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3734 OF 2014

Smt. Sudhatai Shridhar Patil	...Petitioner
<i>Versus</i>	
Dhondubai Raghunath Chougule And Ors	...Respondents

....
Mr.Amit Borkar i/b. A.M. Kulkarni, Advocate for the Petitioner.
Mr.T.S. Ingale, Advocate for Respondent Nos.1 to 3.
....

CORAM : R. G. KETKAR, J.

DATE : 16th NOVEMBER, 2016

P.C.

1. Heard Mr.Amit Borkar, learned Counsel for the petitioner and Mr.T.S. Ingale, learned Counsel for respondents No.1 to 3, at length. On the oral application made by Mr.Borkar, leave to delete respondent Nos.4/1 to 4/6 is granted as respondents No.1 to 3 being the decree holders are the only contesting respondents. Amendment shall be carried out forthwith.

2. In view of the order dated 1.7.2015, Rule. Mr. Ingale waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the

Constitution of India, the petitioner hereinafter referred to as 'defendant No.1/1' has challenged the judgment and order dated 11.6.2013 passed by the learned Principal District Judge, Sangli in Civil Misc. Application No.50/2011. By that order, the learned Principal District Judge rejected the application made by defendant No.1/1 for condoning the delay in depositing costs of Rs.300/- as per order dated 4.1.2003 passed in Misc. Application No.65/1991.

4. Respondents No.1 to 3, hereinafter referred to as the 'plaintiffs' instituted Regular Civil Suit No.28/1979 for partition and separate possession. The suit was decreed on 16.4.1991. The defendants preferred appeal against the decree. As there was delay in filing appeal, they took out application being Civil Misc. Application No.65/1991 for condonation of delay. By order dated 4.1.2003, delay was condoned subject to payment of costs of Rs.300/- within one month. The costs were not deposited within the stipulated time and the plaintiffs filed execution petition on 21.1.2004. It is only thereafter, application was moved on 1.2.2011 for condoning the delay in depositing costs of Rs.300/- thereby extending time for depositing the amount. That application was resisted by the plaintiffs. By the impugned order, the learned Principal District Judge rejected the application.

5. Mr. Ingale invited my application to paragraph-4 of the impugned order and submitted that the learned Principal District Judge recorded a categorical finding that no case is made out for condoning the delay. He submitted that the reason given by the defendants does not constitute sufficient cause. The execution proceedings were filed by the plaintiffs on 21.1.2004 and the present application is filed on 1.2.2011. As there is unexplained delay, the learned Principal District Judge was justified in rejecting the application.

6. By order dated 1.7.2015 notice was issued to the respondents subject to the petitioner depositing litigation costs of Rs.10,000/- in this Court within two weeks. Notice was issued for final disposal. Office remark shows that the petitioner has deposited Rs.10,000/- on 10.7.2015.

7. As noted earlier, the suit instituted by the plaintiffs was decreed on 16.4.1991. Aggrieved by that decision, appeal is preferred. As there was delay in filing appeal, application was taken out for condonation of delay which was allowed on 4.1.2003 subject to payment of costs of Rs.300/- within one month. Admittedly the costs were not deposited within one month. In the application, the petitioner came with the case that her husband was looking after the proceedings and she was unaware of the proceedings. Her husband suffered paralysis and was bed

ridden and eventually he died. She acquired knowledge only upon receiving notice issued by the Taluka Inspector of Land Records for demarketing the suit property and thereafter moved the application. It is no doubt true that in pursuance of the decree passed by the trial Court, the plaintiffs filed Darkhast on 21.1.2004 and that the petitioner also appeared as judgment debtor No.1 and engaged Advocate.

8. Having regard to the fact that the delay was already condoned subject to payment of costs and as the petitioner has complied the order dated 1.7.2015 by depositing Rs.10,000/- in this Court, in my opinion, ends of justice will be served by setting aside the impugned order and directing the learned District Judge to decide the appeal within six months from the date of appearance of the parties. Hence, the following order :

- [i] Impugned order dated 11.6.2013 is set aside. Civil Misc. Application No.50/2011 stands allowed. Appeal preferred by the petitioner stands restored to the file of the learned District Judge.
- [ii] The learned District Judge is requested to decide the appeal within a period of six months from the date of production of the authenticated copy of this order.
- [iii] All contentions of the parties on merits are expressly

kept open.

- [iv] The amount of Rs.10,000/- deposited by the petitioner in this Court along with accrued interest, if any, shall be transmitted to the District Court forthwith. Respondents No.1 to 3 are permitted to withdraw said amount along with accrued interest, if any, unconditionally.
- [v] Rule is made absolute in aforesaid terms. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)