

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

*CIVIL APPLICATION NO. 221 OF 2015
IN
CIVIL REVISION APPLICATION (St.) NO. 10512 OF
2015*

Shri Shamrao Ganpati Dhobale & ors. ... Applicants
Vs
Shri Javedahamad Abdulhamid & ors. ... Respondents.

Mr. Chetan Patil, for Applicants.
Mr. Manoj Patil, for Respondents.

*CORAM : N.M. Jamdar, J.
Friday, 16 September 2016.*

P.C.:

Both the Civil Application as well as Civil Revision Application are taken up for consideration together.

2. In this Civil Revision Application, the Applicants challenge the order passed by the Civil Judge, Junior Division, Kagal on 28 June 2011, rejecting the Applications below Exhibit 1 and 14 filed by the Applicants and has answered the issue of jurisdiction and limitation against the Applicants. This Revision Application is filed on 30 March 2015 and since there is a delay of three years and 186 days in filing the Revision Application, an application for condonation of delay is taken out.

3. As regards the application for condonation of delay is

concerned, it is stated by the Applicants that since the Applicants were prosecuting the appeal in the District Court against the impugned order which was ultimately disposed of as not maintainable, the time lost in prosecuting the appeal be excluded from consideration and the benefit of section 14 of the Limitation Act, 1908 be extended to the Applicants.

4. The learned counsel for the Applicants has relied upon the decision of the Apex Court in the case of *Ghasi Ram and others V. Chait Ram Saini and others* – AIR 1998 Supreme Court 2476. In the present case in the suit the Applicants are represented through an advocate. That there is no statutory appeal provided against impugned orders, is a basic proposition which an advocate is supposed to know. Not only the appeal is filed but it was argued on merits and only after the learned District Judge gave a decision that the appeal is not maintainable. The ignorance is put forth as a ground. It is not a case that the appeal was filed and upon realising it is not maintainable it was withdrawn on own accord and the present Revision was filed. In the circumstances, it cannot be said that the Applicants were not at fault in approaching the District Court. Therefore the delay of more than three years is unexplained.

5. As regards the impugned order is concerned, the learned Civil Judge has observed in the body of the order that the point of limitation cannot be considered at this stage, as in the plaint, the Respondents-Plaintiff has stated that he came to know about the sale

deed in August 2010, thereafter the suit was filed. The learned Civil Judge has observed that in view of this averment the issue of limitation is a mixed question of law and fact which needs to be decided at the time of trial. It however appears in the operative portion the learned Civil Judge has concluded that the suit is not barred by limitation. Therefore, the conclusion by learned Judge that the suit is not barred by limitation, is contrary to the observations made by the learned Civil Judge earlier.

6. In view of this position that the Applicants have approached this Court with delay of more than three years and that the learned Civil Judge in the impugned order has expressed opinion that the issue of limitation has to be kept open at the time of trial, I am of the opinion that, even though I am not inclined to entertain the application for condonation of delay, clarification needs to be given as regards the impugned order that the issue of limitation has been kept open by the learned Civil Judge. The consequence thereof would be that, the learned Civil Judge would take up the issue of limitation along with the other issues at the time of trial, for consideration since it has already been held by the learned Civil Judge that it is a mixed question of law and fact. This course of action to my mind will balance the equities as regards both the parties are concerned. Civil Application as well as the Civil Revision Application stand disposed of in above terms.

(N.M.Jamdar, J.)