

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9406 OF 2014

Smt.Bhagwantibai Tirathdas Keswani .. Petitioner

V/s.

Shri Manik Ganpat Gaikwad .. Respondent

Mr.Girish R. Agrawal for the petitioner

Mr.Harshad Sathe for the respondent

CORAM: K.K. TATED, J.
DATED : AUGUST 9, 2016

PC. :

1 Heard the learned counsel for the parties.

2 Advocate Mr.Harshad Sathe submits that he received instruction to appear on behalf of respondents. He undertakes to file his Vakalatnama within two weeks from today. Same is accepted.

3 By this Petition under Article 227 of Constitution of India, the petitioner plaintiff challenges the order dated 18.6.2014 passed by Civil Judge, Junior Division, Vadgaon, Maval below Exhibit-39 in Regular Civil Suit No.133 of 2012 rejecting plaintiff's application under Order VI Rule 17 and Order I Rule 10 of the Civil Procedure Code, 1908 for

carrying out amendment in plaint.

4 It is the case of the plaintiff that they filed Civil Suit No.484 of 1996 for specific performance of agreement in respect of agricultural land situated and lying at village Chandkhed, Taluka – Maval, District – Pune admeasuring 3 acres. Subsequently, the suit was re-numbered Regular Civil Suit No.133 of 2012. It is the case of the plaintiff that the defendant filed written statement on 15.4.2011. At that time, plaintiff learnt that the defendant effected partition of the suit property and divided between his three sons in the year 2002. As the plaintiff learnt these facts from written statement of defendant, plaintiff filed application below Exhibit-39 for adding defendant's three sons and also to carry out appropriate amendment in the plaint. That application was rejected by the Trial Court on the ground that the plaintiff has made application at late stage. Hence, the present Writ Petition.

5 The learned counsel for the plaintiff submits that the Trial Court erred in coming to the conclusion that the plaintiff preferred application for amendment at late stage. He submits that the defendant filed their written statement after 15 years i.e. on 15.4.2011. From the written statement they learnt that the defendant partitioned the suit property between his sons. As soon as the plaintiff learnt these facts from written statement, plaintiff immediately filed application for carrying out amendment. He submits that inspite of having knowledge about the pendency of the suit since 1994, original defendant with malafide intention divided the suit property amongst his sons to frustrate the plaintiff's claim for specific performance of the contract.

Hence, the impugned order passed by Trial Court is required to be set aside and the application filed by the plaintiff below Exhibit-39 be allowed.

6 On the other hand, the learned counsel for the defendant vehemently opposed the present Writ Petition. He submits that though the plaintiff learnt about division of the suit property from their written statement dated 15.4.2011, plaintiff filed application below Exhibit-39 on 5.8.2013 i.e. after more than 2 ½ year. He submits that plaintiff has not explained the delay in preferring application below Exhibit-39. He submits that for want of explanation about the delay the Trial Court rejected the plaintiffs application for carrying out amendment in Writ Petition. Hence, there is no substance in the present Writ Petition and same is required to be rejected.

7 Heard the learned counsel for the parties at length. It is to be noted that in the present proceeding, there was delay on the part of the defendant to file their amended written statement. Defendant filed amended written statement after more than 10 years. It is to be noted that though the partition took place in the year 1988 the same was placed on record by the defendant in the year 2011. Considering the delay on the part of the defendant to disclose the material fact in the pending suit, I am of the opinion that Trial Court erred in coming to the conclusion that plaintiff failed to disclose sufficient cause for delay in filing application for carrying out amendment in plaint.

8 It is to be noted that the Apex Court in the matter of

N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123 held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to

think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

9 Considering the above mentioned facts that there was delay on the part of the defendant to disclose the partition which took place in 1998 and the law declared by the Apex Court as stated hereinabove, I am satisfied that the petitioner has made out a case for allowing in Writ Petition. Hence, following order is passed:

- a) Impugned order dated 18.6.2014 passed by Civil Judge, Junior Division, Vadal Maval below Exhibit- 39 in Regular Civil Suit No.133 of 2012 is set aside.
- b) Petitioner plaintiff's application below Exhibit-39 under Order VI Rule 17 and Order I Rule 19 of the Civil Procedure Code, 1908 dated 5.8.2013 is allowed.
- c) Plaintiff to carry out amendment in plaint within 10 weeks from today and amended copy be served on respondent defendant immediately.
- d) Writ Petition stands disposed of accordingly.

(K.K. TATED, J.)