

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 13143 OF 2016

Mr. Sharukh K. Master

...Petitioner

Versus

Mr. T.B.B. Unwalla (deceased)

Through L.Rs. Mrs. Dr. Roda Unwalla (deceased)

Through L.Rs.

..Respondents

....

Mr.Nitin Gangal, Advocate for the Petitioner.

Mr.S.S. Kanetkar, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 5th DECEMBER, 2016

P.C.

1. Heard Mr. Nitin Gangal, learned counsel for the petitioner and Mr.S.S. Kanetkar, learned counsel for the respondents, at length.

2. Rule. Mr.Kanetkar waives service. Having regard to the narrow controversy raised between the parties in this Petition as also 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 the 'defendant', has challenged the judgment and order dated 11.8.2016 passed by the learned Adhoc District Judge-1, Pune in Civil Misc. Application No.1037/2013. By that order, the learned District Judge rejected the application made by the defendant for condoning the delay of 73 days caused in filing Misc. Civil Appeal.

4. Mr.Gangal submitted that on 11.3.2008, the learned trial Judge framed issues at Exhibit-87. Issue No.3 was to the following effect:

“3) Whether plaintiff proves his lawful possession over suit property ?”

5. The plaintiff filed application on 22.7.2013 at Exhibit-123 for recasting of issues thereby deleting issue No.3. By order dated 23.7.2013, the learned trial Judge partly allowed the application and recast issue No.3 as prayed for by the plaintiff. The plaintiff filed Review Petition under Section 114 read with Order XLVII Rule 1 of C.P.C. By order dated 27.8.2013, the learned trial Judge allowed the Review Petition and deleted issue No.3. Aggrieved by that order, the defendant preferred Misc.

Civil Appeal under Order XLIII Rule 1(w) of C.P.C. on 4.12.2013. As there was delay of 73 days, he filed Civil Misc. Application which was rejected by the learned District Judge. He has taken me through the impugned order and submitted that the learned District Judge committed error in dismissing the application for condonation of delay. He submitted that the learned District Judge should have considered the application for condonation of delay liberally.

6. On the other hand, Mr. Kanetkar supported the impugned order. He has taken me through the application for condonation of delay and submitted that no case is made out for condoning the delay.

7. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that there is delay of 73 days in filing the appeal. In the case of ***State Of Nagaland vs. Lipok Ao & Ors., (2005) 3 SCC 752***, it is held by the Apex Court that what counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion.

The expression “sufficient cause” should be considered with pragmatism in a justice oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.

8. Applying the tests laid down by Apex Court in ***State Of Nagaland*** (supra) as also having regard to the shortness of delay, in my opinion, the learned District Judge should have condoned the delay. Hence, the following order :

- (i) The impugned order dated dated 11.8.2016 passed by the learned Adhoc District Judge-1, Pune in Civil Misc. Application No.1037/2013 is set aside. Civil Misc. Application No.1037/2013 stands allowed.
- (ii) The learned District Judge is requested to decide the appeal as expeditiously as possible and within four weeks from production of the authenticated copy of this order.
- (iii) All contentions of the parties on merits are kept open.
- (iv) Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)