

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 13433 OF 2016

Bapu Daulu Lamane (decd) And Ors. ...Petitioners

Versus

Dhondiram Akaram Lamane And Ors. ...Respondents

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Mr.Balasaheb R. Deshmukh, Advocate for the Petitioners.

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CORAM : R. G. KETKAR, J.

DATE : 14th DECEMBER, 2016

P.C.

1. Not on board. At the request of Mr.Deshmukh taken up for admission.
2. Heard Mr.Balasaheb Deshmukh, learned Counsel for the petitioners, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'plaintiffs' have challenged the judgment and order dated 29.8.2016 passed by the learned District Judge-3, Karad in Civil Misc. Application No.24/2015. By that order, the learned District Judge allowed the application and condoned the delay of 152 days caused in

filing appeal against the judgment and decree dated 31.10.2014 passed by the learned Civil Judge, Senior Division, Karad in Special Civil Suit No.461/1995 (old) and Special Civil Suit No.159/2012 (old).

4. In support of this Petition, Mr. Deshmukh submitted that writ of summons of the suit was duly served on the defendants. Defendants No.1 and 2 engaged Advocates M.G. Jagtap and Panditrao K. Patil. Despite service, defendants No.1 & 2 did not file written statement. On 22.10.2010 the suit proceeded without written statement of defendants No.1 & 2. Defendant No.3 filed written statement at Exhibit-47. Pending the suit, Advocate for defendant No.3 filed purshis dated 7.8.2013 for cancelling his Vakalatnama on the ground that defendant No.3 is not giving instructions for conducting suit. He submitted that the defendants filed appeal and since there was delay in filing the appeal, filed application for condonation of delay. One of the grounds for condoning the delay was death of Advocate M.G. Jagtap on 24.12.2013. However, as defendants No.1 & 2 were represented by two Advocates, after death of Advocate M.G. Jagtap, Advocate Panditrao K. Patil could have filed appeal. In other words, death of one of the Advocates

cannot constitute sufficient cause for condoning the delay. As far as defendant No.3 is concerned, Advocate on behalf of defendant No.3 filed purshis on the ground that defendant No.3 is not giving instructions for conducting the suit.

5. Mr. Deshmukh submitted that in the cross-examination, defendants No.1 & 2 admitted that since 2012 they had not visited their Advocate. He has taken me through the impugned order and submitted that the learned District Judge was not justified in condoning the delay.

6. I have considered the submissions advanced by Mr.Deshmukh. I have also perused the material on record. It appears that after service of suit summons on defendants No.1 & 2, they engaged Advocates M.G. Jagtap and Panditrao K. Patil. It further appears that pending suit, Advocate M.G. Jagtap died on 24.12.2013. The suit was decreed on 31.10.2014. It further appears that on 7.8.2013, Advocate for defendant No.3 filed purshis for discharging him on the ground that defendant No.3 is not giving instructions. From the material on record, it does not appear that after giving discharge to the Advocate for defendant No.3, the Court had issued any notice to defendant

No.3. Apart from that it is also not in dispute that Advocate M.G. Jagtap died on 24.12.2013. There is delay of 152 days in filing the appeal and the moot question is whether the defendants have made out sufficient cause for condoning the delay.

7. 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. For the reasons mentioned hereinabove and having regard to the shortness of delay, in my opinion, no case is made out for invocation of powers under Article 227 of the Constitution of India. The impugned order is purely discretionary order. The plaintiffs were not in a position to demonstrate that the discretion exercised by the learned District Judge is arbitrary, capricious or perverse warranting

interference under Article 227 of the Constitution of India.
Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)