

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 316 OF 2016
IN
CIVIL REVISION APPLICATION NO. 412 OF 2008

Chandrakant Baburao Bhagat
since deceased through his H.LRs
Pramila C. Bhagat & Ors.

..Applicants

In the matter between :

Chandrakant Baburao Bhagat

..Petitioner

VS.

Keshav B. Bhagat & Ors.

..Respondents

Mr. Samir A. Vaidya for Applicants / Petitioner.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 10 OCTOBER 2016

P.C :

1] Heard Mr. Vaidya for the applicants.

2] By this civil application no. 316 of 2016. the applicants, seeks recall of orders dated 25 August 2010 and 27 April 2015.

3] This civil application is itself made after considerable delay. The reason for such delay is stated is the order dated 12 June 2015, by which, this court, declined to entertain civil application no. 210 of 2014 by observing that so long as the orders dated 27 April 2015 and 25 August 2010 are not recalled, no relief can be granted

in civil application no. 210 of 2014. The reason, as stated, is not acceptable. This is because independent reasons ought to have been indicated for not taking steps to seek recall of the orders dated 27 April 2015 and 25 August 2010 within reasonable time. The contention that the applicants were unaware of these orders, cannot be accepted. Perusal of both the matters indicate that the applicants were represented by Advocates and Further, such Advocates had also made some statements, at the stage when said orders were made. The delay in taking out the present civil application, therefore, remains unexplained.

4] From the record, it is quite clear that the applicants have not been diligently pursuing the matter. Despite indulgences, steps do not appear to have been taken within any reasonable period. The circumstance that the lawyers have changed, cannot be regarded a panacea for all maladies. Accordingly, this civil application deserves dismissal, as there is hardly any explanation for the inordinate delay in seeking recall of the two orders.

5] That apart, if the main civil revision application is perused, it is clear that the same questions order dated 7 April 2008 made by Civil Judge, Senior Division, Panvel, dismissing the applicants application seeking rejection of plaint under Order VII Rule 11(d) of

CPC. The only ground set out in the said application is that the suit in question was barred by '*res judicata*'.

6] If the impugned order is perused, it is clear that there is no jurisdictional error. In this case, plea of *res judicata*, it appears, was raised on basis of some *exparte* orders. In any case, in order to make good the plea of *res judicata*, it was necessary for the applicants to take such plea in their written statement and to produce adequate materials on record in order to establish that the plea is really attracted. In the facts and circumstances of the present case, there was no question of entertaining such a plea in an application seeking rejection of plaint under Order VII Rule 11(d) of the CPC. If therefore, even if the civil applications were to be allowed, ultimately, this would not be a fit case to entertain the civil revision application and interfere with the order impugned.

7] For the aforesaid reasons, the civil application is dismissed. Since, on basis of such frivolous proceedings, the applicants have succeeded in delaying the progress in the suit, the applicants are directed to pay costs of Rs.25,000/- (Rupees Twenty Five Thousand). Such costs should be paid within a period of four weeks. The trial court to ensure that such costs are recovered from the applicants.

8] The applicants to appear before the trial court on 21 November 2016 and produce authenticated copy of this order.

9] Civil application is dismissed. As a consequence, the civil revision application also stands dismissed with costs as aforesaid.

(M. S. SONAK, J.)

Chandka