

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.926 OF 2016

Vajnath Dattatray Rukari ... Petitioner
Vs.
Vimaladevi Mohan Ghiya and others ... Respondents

Mr. Mahendra N. Sandhyanshiv for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 24, 2016

P.C. :

Heard Mr. Sandhyanshiv, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 20.11.2015 passed by the learned District Judge-9, Pune in Civil Revision Application No.25 of 2014. By that order, the learned District Judge allowed the C.R.A. subject to costs of Rs.15,000/- and quashed and set aside the judgment and order dated 04.08.2014 passed by the learned Additional Judge, Small Causes Court, Pune in Miscellaneous Application No.30 of 2011. The learned District Judge condoned the delay of 142 days in filing the applications under Order IX, Rule 113 of C.P.C. for setting aside the ex-parte judgment and decree dated 30.10.2010 passed in R.C.S.No.484 of 2008.

3. In support of this Petition, Mr. Sandhyanshiv has taken me through the trial Court's order. In particular, in paragraphs 15 and 16, the learned trial Judge considered evidence of Dr. Purandare at exhibit-34. After considering the evidence of Dr. Purandare, the learned trial Judge observed that the ground put forth by the respondents about the

illness of their mother for causing delay in filing application to set aside ex-parte decree is not sustainable. In paragraph 17, the learned trial Judge referred to the decision of this Court in the case of *Asha Shah Vs. Prabhavati Gujrathi Wani in Civil Application No.1300 of 2007* and distinguished that judgment by observing that the said decision is not applicable to the facts of the present case. He submitted that the learned trial Judge, after considering the material on record, has rightly rejected the application. As against this, the learned District Judge was not justified in condoning the delay. He submitted that ex-parte decree was passed on 30.10.2010 and the petitioner has executed the decree and obtained possession on 03.03.2011. The application under Order IX, Rule 13 of C.P.C. is made and it is beyond 142 days. He submitted that no sufficient cause is made out for condoning the delay.

4. I have considered the submissions advanced by Mr. Sandhyanshiv. I have also perused the orders passed by the Courts below. As noted earlier, the learned trial Judge has rejected the application. As against this, the learned District Judge has allowed Revision Application and condoned the delay. In paragraph 9, the learned District Judge noted that applicant No.2 deposed that he came to know about passing of ex-parte decree on 01.03.2011 and on 03.03.2011 when they were dispossessed. Certified copies were received on 16.03.2011. The Advocate filed application for condonation of delay on 20.04.2011. In paragraphs 9 and 10, the learned District Judge observed that the dispute is in respect of the immovable property and the delay was neither deliberate nor intentional. In paragraph 10, the learned District Judge categorically recorded a finding that there was sufficient reason for the applicants in not filing the application for setting aside ex-parte decree within time. In the case of ***State of Nagaland Vs. Lipok A.O.***, AIR 2005 SC 2191, 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.

5. Applying the tests laid down to the facts of the present case and having regard to the fact that the impugned order is purely discretionary, more so, when the delay is of 142 days, I do not find that any case is made out for interfering with the impugned order. I have noted earlier that in fact the petitioner has executed the decree and obtained possession. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab