

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2920 OF 1994

Popat Baburao Jatgap

Petitioner

Versus

Sayad Mazhar-ul-Mohamad Ismail

& others

Respondents

Mr. A.B. Gatne advocate for the petitioner

Mr. V.S. Bedre advocate for Respondent No.1 to 7

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 20th July, 2017.)

PER COURT :-

1 The petitioner is aggrieved by the order dated 15.7.1994 passed by the Appeal Court, thereby rejecting the Miscellaneous Civil Application No.109/94 filed by the petitioner, seeking condonation of delay of 265 days in preferring the appeal.

2 I have considered the submissions of the learned advocates for the petitioner – original defendant and the respondents – original plaintiffs.

3 Shri V.S. Bedre, learned Advocate has strenuously submitted that, paragraph Nos.16 and 17 of the impugned order would clearly indicate the manner in which the petitioner played every trick in prolonging the matter. He submits that, he, even

changed his advocate so as to seek an adjournment in RCS No.628/85. From October, 1991 till the Judgment of the Trial Court dated 30.6.1993, the petitioner made every effort to seek adjournments in the matter. He even applied for seeking a change in the Court, by moving a transfer application. After all his efforts were rendered futile, he then started remaining absent from the proceedings. Mr. V.S. Bedre, therefore, submits that this Court may dismiss this petition by imposing heavy costs, as the petitioner has compelled the respondents to be in litigation for over 23 years.

4 In so far as the submissions of Shri V.S. Bedre based on the conduct of the petitioner before the Trial Court is concerned, in my view that would be an aspect to be considered by the Appeal Court, as it has to consider as to whether the Judgment of the Trial Court deserves to be set aside. As such, the present issue that was before the Appeal Court was as regards the delay of 265 days in filing the appeal. It was not an issue of whether the Judgment of the Trial Court deserves to be set aside.

5 The Honourable Apex Court in the matter of **Collector, Land Acquisition, Anantnag versus Mst. Katiji & others** (AIR 1987 SC 1353) and in the matter of **Esha Bhattacharjee versus Managing Committee of Raghunathpur Nafar**

Academy & others (2013 (1`2) SCC 649), has laid down the law that no party benefits from causing a delay in its proceedings. If oblique motives and laches are not attributable to the conduct of a litigating side, the delay can be condoned.

6 In the instant case, in so far as the delay of 265 days caused in preferring the appeal is concerned, it is obvious that the petitioner changed his Advocate and thereafter was negligent in not appointing a new Advocate in his place. He appeared from 19.01.1991 to 10.2.1991 personally in the Court but did not engage an advocate. As such, there was no representative in the proceedings before the Trial Court who could have conveyed to the petitioner that the suit has been decreed. Negligence and laxity on the part of the petitioner is writ large from the record.

7 However, it cannot be ignored that the petitioner would be rendered remedy-less if the delay is not condoned. It also cannot be lost sight of that the delay of 265 days can neither be termed to be inordinate, nor can it be said to be such that it cannot be condoned. In order to ensure that the petitioner gets an opportunity to contest the proceedings, I am of the view that the delay of 265 days can be condoned by imposing costs on the

petitioner, so as to reduce the hardships of the respondents.

8 Considering the above, this petition is allowed. The impugned order dated 15.7.1994 is quashed and set aside and the Miscellaneous Civil Application No.109/94 is allowed, subject to payment of costs of Rs.7,000/-, which the petitioner shall deposit before the Appeal Court on or before 21.8.2017, failing which the appeal shall not be registered and the order of rejection of the Miscellaneous Application shall stand restored. If the costs are deposited, the respondents, who are seven in number, shall withdraw the said amount in equal proportion without conditions. After the costs are deposited, the Trial Court shall issue notices to all the litigating sides after registering the Appeal.

9 Needless to state, the Appeal which was instituted in 1994 shall, therefore, be decided as expeditiously as possible and in any case on or before the 31st day of March, 2018.

(RAVINDRA V. GHUGE , J)