

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

CIVIL APPLICATION NO. 14074 OF 2016

IN

FIRST APPEAL (ST) NO.26427 OF 2016

Eknath s/o. Bapurao Jadhav & Another .. Applicants

Versus

Mahadeo Ganpat Akolkar & Another .. Respondents

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Mr. R.R. Mantri h/f Mr. B.N. Palve, Advocate for the applicants
Mrs. Charuta S. Deshmukh, Advocate for the respondent nos.1 & 2

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CORAM: P. R. BORA, J.
DATE : 21TH JUNE, 2017.

ORDER :

1. The applicants have filed the present application seeking condonation of delay, which has been caused in filing the first appeal by them against the Judgment and decree passed in Spl. Civil Suit No.7/2011 by the Court of Civil Judge, Senior Division, Ahmednagar on 25.07.2014. As averred in the application, delay of 655 days is caused in filing the present first appeal.

2. The aforesaid Special Civil Suit was filed by the present respondents against the present applicants seeking specific performance of contract of sale allegedly entered into between the applicants and the respondents pertaining to 2 Hectares of land out of Gat No.260/1 ad-measuring 2 Hectare, 11 R situated at Mauje

Savedi, Dist. Ahmednagar. The suit so filed by the respondents has been decreed by the Civil Court vide Judgment and decree passed on 25.07.2014.

3. Shri. Mantri, learned Counsel appearing for the applicants submitted that, the impugned Judgment and decree is apparently unsustainable. The learned Counsel submitted that, in a suit for specific performance, heavy burden lies on the plaintiff to prove that, he was ready and willing to perform his part of contract. The learned Counsel submitted that, in the instant matter, the evidence on record clearly shows that, the plaintiffs i.e. present respondents have utterly failed in discharging the said burden and despite that, the trial Court has granted the decree of specific performance in their favour. The learned Counsel submitted that, without any cogent and sufficient evidence, the trial Court has recorded a conclusion that, the defendants / present applicants received the sum of Rs.35,00,000/- as has been contended by the plaintiffs in the civil suit. The learned Counsel submitted that, a specific plea was raised by the present applicants that, only an amount of Rs.20,00,000/- was received to them by the respondents and the said amount was received not towards the part payment for consideration of the property mentioned in the alleged agreement to sale, but it was the amount of hand loan obtained by the present applicants from the present respondents for repair of their house and for agriculture purposes. The learned Counsel submitted that, the trial Court has failed in appreciating the plea so raised by the applicants, which has resulted in passing an erroneous decree by it.

4. The learned Counsel further submitted that, the trial Court has also failed in appreciating that, the amount of Rs.12,50,000/-

allegedly paid by the respondents to the sister of the applicants was without knowledge and consent of the applicants and as such the amount so paid cannot be held to have been paid by the respondents - plaintiffs towards the consideration of the property, which is allegedly the subject matter of alleged agreement of sale.

5. The learned Counsel placing reliance on the Judgment of the Hon'ble Apex Court in the case of Jugraj Singh and another Vs. Labh Singh and others reported in AIR 1995 SC 945 submitted that, “continuous readiness and willingness at all stages from the date of agreement till the date of hearing of the suit has to be proved by the plaintiff so as to obtain the decree of the specific performance”. The learned Counsel submitted that, if aforesaid criteria is applied to the facts of the present case, the impugned decree of specific performance will have to be set aside since the respondents have failed in proving continuous readiness and willingness. Further, relying upon the Judgment in case of Bishwanath Mahto Vs. Srimati Janki Devi AIR 1978 Patna 190, the learned Counsel submitted that, the readiness and willingness of the plaintiff to carry out his parts of the agreement must refer to the real agreement and the correct terms and he cannot be relieved of the responsibility and escape the consequences by pleading falsely. The learned Counsel submitted that, the alleged payment made by the respondents-plaintiffs to the sister of the applicants amounting to Rs.12,50,000/- is not the part of the alleged agreement of sale, the specific performance of which was sought by the respondent – plaintiffs and as such the trial court should not have considered the said payment to have been made towards the part consideration of the suit property, which is the subject matter of the alleged agreement of sale.

6. The learned Counsel also relied upon the Judgment of the Division Bench of Calcutta High Court in the case of **Mst. Sahida Bibi Vs. Sk. Muhammad** reported in **AIR 1983 Calcutta 216** and the Judgment of the learned Single Judge of the Andhra Pradesh High Court in case of **Kommisetti Venkatasubbayya Vs. Karamsetti Venkateswarlu and others** reported in **AIR 1971 AP 279** to support the contentions raised by him.

7. The learned Counsel further submitted that, the applicants have sufficiently explained the causes of delay. The learned Counsel submitted that, the medical certificate of the applicant no.1 is placed on record, which discloses that, he was suffering from 'Bleeding Haemorrhoids c Anemia'. The learned Counsel further submitted that, thereafter the real uncle of the applicants expired in the month of July - 2015 because of which applicants could not take the steps for filing an appeal. The learned Counsel further submitted that, to arrange an amount of Rs.3,00,000/- to pay court fees, was another big hurdle for the applicants in filing the appeal within the period of limitation. The learned Counsel submitted that, with great difficulty the applicants could collect such a huge amount and immediately thereafter filed the appeal alongwith an application for condonation of delay. The learned Counsel relying upon the Judgment passed by this Court in **Manoranjan s/o. Haripada Pradhan & another V/s. Union of India** reported in **2017 (1) Mh.L.J. 163** submitted that, 'to do substantial justice' must be the criteria in deciding the applications under Sec.5 of the Limitation Act and the liberal view has to be therefore taken so as to advance the cause of justice. The learned Counsel submitted that, delay caused on the part of the applicants is unintentional. The learned Counsel further submitted that, law is well settled that no party stands to gain by approaching

the court late and there is no presumption that delay in approaching the court is deliberate or intentional.

8. The learned Counsel lastly submitted that, while considering the present application filed by the applicants for condonation of delay, Court shall have regard to the fact that, inherent serious mistakes are committed by the lower Court in passing the decree of specific performance in favour of the present respondent, which has caused serious injustice to the present applicants and this Court, shall therefore adopt justice oriented approach to condone the delay and give an opportunity to the applicants to agitate the matter on merits so as to do substantial justice.

9. The respondents have filed affidavit-in-reply denying the averments in the application for condonation of delay. Smt. Charuta Deshmukh, learned Counsel appearing for the respondents, relying upon the averments in the said affidavit in reply strongly opposed for condoning the delay. The learned Counsel invited my attention to the medical certificate placed on record at Exh.'A', filed by the applicants and submitted that, applicant no.1 was certified to be fit to resume his duties from 01.03.2015. The learned Counsel submitted that, there is absolutely no explanation by the applicants as to why after applicant no. 1 becoming fit on 01.03.2015, the applicants could not file the first appeal. The learned Counsel submitted that, similarly there is no explanation of the period till 02.1.2015, the day on which the applicant no.1 is stated to have fallen ill. The learned Counsel submitted that, the certified copy of the impugned Judgment and decree was obtained by the applicants on 14.08.2014, and as such even if it is assumed that, the applicant no.1 fell ill and was under treatment with effect from 02.01.2015, there is no explanation of the

period in between 14.08.2014 to 01.01.2015 as to why during said period the applicants did not file the appeal.

10. The learned Counsel further submitted that, even if it is accepted that the applicants were prevented from taking steps because of the demise of their uncle in the month of July -2015, the question remains as to why the appeal was not filed by the applicants during 2nd March, 2015 to July – 2015. The learned Counsel further submitted that, the contention of the applicants that, because of the death of their uncle in July – 2015 they could not file the appeal till 23.08.2016 also cannot be accepted. The learned Counsel submitted that, the applicants have utterly failed in explaining the said delay of the period of more than 1 year.

11. The learned Counsel further submitted that, the another reason stated by the applicants about their financial condition and their inability to arrange the amount of court fee also cannot be a ground for condonation of delay.

12. The learned Counsel submitted that, because of the Judgment and decree passed by the trial Court, certain rights are accrued in favour of the respondents i.e. original plaintiffs. The learned Counsel submitted that, the respondents – plaintiffs cannot be deprived from enjoying the fruits of decree passed in their favour by entertaining such an application by the applicants wherein no sufficient reason has been provided. The learned Counsel, placing reliance upon the Judgment of the Hon'ble Apex Court in the case of **Ramlal Vs. Rewa Coal Fields Limited** reported in **1962 AIR (SC) 361**, prayed for rejection of the application.

13. I have carefully considered the submissions advanced on behalf of the applicants and respondents. I have also perused the impugned Judgment and the other material placed on record by the parties.

14. The first reason as has been assigned in the application is that, applicant no.1 who was looking after the court proceedings was suffering from illness due to 'bleeding Haemorrhoids c Anemia' and was under the treatment of Dr. Vasant Zende at Ahmednagar from 02.01.2015. It is also contended that, since the doctor had advised applicant no. 1 to take bed rest compulsorily, he could not move anywhere and thus also could not take steps towards filing of the appeal.

15. The second reason is that, the uncle of the applicants died due to heart attack in the month of July – 2015, because of which, the applicants could not go anywhere and also could not file the first appeal.

16. The third ground raised in justification of the delay caused is lack of funds with the applicants. It is contended that for filing an appeal the applicants were to pay huge court fee of Rs.3,00,000/-, which, the applicants could arrange with great efforts and much of the time was consumed for that purpose.

17. As noted herein above, the respondents have filed the affidavit-in-reply to the application filed by the applicants. In para no.4 of the affidavit-in-reply, the respondents have specifically raised a plea that, the applicants have not given any explanation for the delay of the period during August – 2014 to January – 2015, March –

2015 to July – 2015 and thereafter from August – 2015 to August – 2016. It is further averred that, only after the notice of the execution proceedings was served upon the applicants that, they have filed the appeal.

18. The averments made in the application for condonation of delay reveal that, the certified copy of the impugned Judgment and Award was obtained by the applicants on 14.08.2014. As per the contention of the applicants, applicant no.1 fell ill and was under treatment from 02.01.2015 onwards. The applicants have placed on record the medical certificate, which is marked as Exh.'A'. On perusal of the said certificate, it reveals that, applicant no.1 Eknath Jadhav was under treatment of Dr. Vasant Zende from 02.01.2015 as an outdoor patient. The certificate further reveals that, applicant no.1 was advised complete bed rest from 02.01.2015 to 28.02.2015. The certificate further reveals that, applicant no.1 was examined by Dr. Zende on 01.03.2015 and was certified by him to be fit to resume duties from 01.03.2015. In view of the undisputed facts as aforesaid, it is quite evident that, the applicants have not explained and have not assigned any reason as to why they could not file the appeal in the period between 14.08.2014 to 01.01.2015. Almost four months' period was available and the applicants could have conveniently filed the appeal in the said period. Why it was not filed, has not at all been explained by the applicants.

19. As per the further contention of the applicants, since their uncle expired in the month of July – 2015, they were confined to their home and therefore could not file an appeal. The reason so put forth, even if accepted as it is, the fact remains that the applicants have not explained as to why the appeal was not filed in the period

between 02.03.2015 to July – 2015, which is again a long period of four months. It is further unconscionable that, because of the death of their uncle in July – 2015, the applicants could not file the appeal till August – 2016. Even if it is assumed that, the applicants were in deep sorrow because of the death of their uncle, it is difficult to accept that, the applicants took the period of more than 13 months to come out of the same. It appears that, merely for the sake of providing some excuse, that such a plea has been taken by the applicants as about death of their uncle.

20. In view of the fact that, the applicants have utterly failed in explaining the delay of the period in between (i) August - 2014 to January – 2015 (ii) March - 2015 to July - 2015 and (iii) August - 2015 to August – 2016, the first two grounds (1) the illness of the applicant no.1 and (2) the death of uncle of the applicants, cannot be held to be 'sufficient cause' to justify the delay caused in filing the first appeal by the applicants.

21. Now falls for consideration the last and the foremost cause provided by the applicants to justify the delay occasioned in filing the appeal by them. As was canvassed by Adv. Mantri, the applicants could not arrange for the huge amount of Rs.3,00,000/-, which was the amount of court fees payable for filing the present appeal and that was the core cause according to him that the appeal could not be filed by the applicants within the period of limitation.

22. During course of the arguments when the aforesaid ground was canvassed, though it was strongly resisted by Smt. Deshmukh, learned Counsel for the respondent, stating that the poverty or lack of funds cannot be held to be a "sufficient cause" as contemplated under

Section 5 of the Limitation Act, I was literally convinced that to arrange the huge amount of Rs.3,00,000/- was a difficult task and if the delay is stated to have caused for the said reason, a prima – facie case is made out by the applicants for condonation of delay. However, when I went through the record of the case, I noticed that, the court fee stamps amounting Rs.3,00,000/-, which are attached with the appeal by the applicants were purchased by the applicants way back on 24.11.2014. The applicants have attached to the appeal 100 court fee stamps of Rs.3,000/- each. The stamps so affixed to the memo of appeal show that, the stamp vendor had purchased said stamps from the Treasury Office at Aurangabad on 19.11.2014 and the said stamps were purchased by the applicants from the said stamp vendor on 24.11.2014. The court fee stamps of Rs.3,00,000/- were, thus, in possession of the applicants since 24.11.2014. The foremost reason put forth by the applicants to justify the delay caused in filing appeal by them has, thus, been proved to be absolutely false. The applicants have made a patent untrue statement in the present application that, after the alternate arrangement for court fees and expenses were made, the applicants did approach the High Court by filing the present appeal and the application.

23. Even in the argument of the learned Counsel appearing for the applicants, the main cause which was canvassed in justification for condonation of delay was that the applicants were lacking funds and with great difficulty after the amount of Rs. Three Lakhs was collected by them that the court fee stamps were purchased and thereafter the appeal was filed along with the present application.

24. As noted herein above, the record shows that, the court fee stamps of the entire amount of Rs. Three Lakhs were purchased by

the applicants way back on 24.09.2014. It is thus quite evident that, the applicants have come out with an absolutely false ground that, they were unable to arrange for the amount of court fees and because of that they could not file an appeal. In so far as the other two grounds are concerned, I have made elaborate discussion herein above as to how there is no substance in the grounds so raised and have also recorded a finding that, on the basis of the reasons so put forth, delay of the huge period of 655 days cannot be condoned. As mentioned earlier, three grounds were pressed by the applicants in order to justify the delay. All the three grounds have been found to be unsustainable. Not only that, the applicants have failed in making out any sufficient cause, but have attempted to base their claim for condonation of delay on falsehood. The request of the applicants to condone the delay, therefore deserves to be turned down not only on the ground that they have failed to show any sufficient cause for condoning the delay, but more for the reason that, they have come out with a false case. They have made wrong representation that for want of court fee they could not file the appeal within the period of limitation. Considering the conduct of the applicants revealed as above, they are disentitled from getting the discretionary relief.

25. It has to be stated that when discretionary relief is prayed for, the party claiming such relief must come to the court on proper disclosure of facts. Plaint, appeal or application in such cases must state all true facts with sufficient clarity. Suppression of any material fact or making of any wrong, incorrect or untrue state disentitles the person making such statement for any discretionary relief.

26. I reiterate that, the lack of funds to arrange the court fee amount was the only plausible reason canvassed by the applicants in

justification of the delay caused in filing the appeal by them and since the same has been proved to be based on falsehood, the application so filed by the applicants deserves to be rejected.

27. As has been noted by me herein above, it was earnestly urged by the learned Counsel appearing for the applicants that, while considering the causes for occurrence of the delay, the court should adopt justice oriented approach and shall give due consideration to the grounds of objections raised in exception to the impugned Judgment. The learned Counsel for the applicants had relied upon one order passed by this Court in the case of **Manoranjan s/o. Haripada Pradhan & another** (cited supra) to urge that, 'to do substantial justice' must be the criteria in deciding the applications under Section 5 of the Limitation Act and liberal approach has to be taken so as to advance the cause of justice. The fact apart that, the present applicants have lost the right to seek any such discretionary relief since their case is based on falsehood. Even otherwise, the facts of the case relied upon by the applicants were quite different than the facts involved in the present case.

28. It has to be further stated that, availability of good and sustainable grounds in exception to the Judgment, appealed against may not absolve the applicant from showing sufficient cause for occurrence of the delay caused in filing the appeal by him. The existence of "sufficient cause" is condition precedent for the exercise of discretion under Section 5 of the Limitation Act. The Court has to be satisfied whether there existed sufficient cause for the delay. This is imperative for the party seeking condonation. No one can as of right seek the condonation of delay without showing sufficient cause only on the ground that, while passing the impugned Judgment, the

court passing the said Judgment has committed inherent mistakes, because of which serious injustice has been caused to the person coming in appeal.

29. As has been held by the Hon'ble Apex Court in catena of Judgments, delay cannot be condoned as a matter of judicial generosity. Where delay could have been avoided by due care and caution the court may not exercise discretion to condone the delay. As has been observed by this court in the case of *Kamalbai Narasaiyya Shrimal Vs. Ganpat Vitthalrao Gavare, 2007 (1) Mh.L.J. 807*, the expression "sufficient cause" cannot be erased from Section 5 of the Limitation Act by adopting excessive liberal approach, which would defeat the very purpose of Section 5 of the Limitation Act. There must be some cause, which could be termed as sufficient one for the purpose of delay condonation. The delay cannot be condoned only because it is unintentional. It would be rather too wide interpretation if the application for condonation of delay is to be allowed only because there is no intention of a party to cause the delay.

30. In the present matter in fact there is no scope for the applicants to raise such a plea that, the delay caused on their part is unintentional. Only applicants could have explained as to why they did not prefer the appeal till August – 2016 when the court fee stamps were purchased by them long back on 25.11.2014. In absence of any explanation by the applicants in that regard it is difficult to accept the plea of the applicants that the delay caused of more than 600 days is unintentional and for *bona fide* reasons.

31. As has been held by the Hon'ble Apex Court in the case of *Basawaraj & Another Vs. Special Land Acquisition Officer* reported in *(2013) 14 SCC 81*, "sufficient cause" cannot be liberally interpreted if negligence, inaction or lack of *bona fides* is attributed to the party. The Hon'ble Apex Court has further observed that, "even though limitation may harshly affect rights of a party, but it has to be applied with all its rigour when prescribed by the statute. Courts have no choice but to give effect to the same. The Courts do not have power to extend the period of limitation based on equitable grounds." The Hon'ble Apex Court has lastly held that, 'if party acted with negligence, lack of *bona fides* or inaction, then there cannot be any justified ground for condoning the delay.' In such cases, as has been further held by the Hon'ble Apex Court, "it is also not permissible to condone the delay by imposing cost or certain other conditions, since that would amount to violation of statutory principles and showing utter disregard to legislature."

32. After having considered the facts involved in the matter in light of the principles laid down in the Judgments referred to by me herein above, I have no hesitation in holding that no case is made out by the applicants to condone the delay caused in filing appeal by them. Hence the following order.

ORDER

- i) The application is rejected.

[P.R. BORA, J.]