

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11966 OF 2016

SHIVAJI TULSHIRAM PATIL DIED LRS
VERSUS
ASHABAI DHONDU BORADE

...
Advocate for Petitioners : Shri Rohit S. Sarvadnya
h/f Shri N.V. Mande
...

CORAM : RAVINDRA V. GHUGE, J.
Dated: August 04, 2017
...

PER COURT :-

1. The petitioners are aggrieved by the order dated 9.6.2016 by which the appellate Court has dismissed MARJI No.77 of 2015 and has refused to condone the delay of 42 days in filing a Regular Civil Appeal (RCA) against the judgment and decree dated 29.11.2014, delivered in RCS No. 142 of 2013.

2. The office report indicates that the sole respondent has been served by court notice. However, no appearance has been entered, either through an Advocate or in person.

3. In this backdrop, I have heard the learned Advocate for the petitioner.

4. It is apparent from the record that the petitioner is a widow, who has preferred a RCA for challenging the judgment and decree passed by the trial Court. The suit has been decreed ex-parte, since the deceased husband of the petitioner was the original defendant and has passed away on 1.1.2015. The widow obtained certified copies in the matter and despite being in mourning, preferred the RCA along with the application for condonation of delay. The appeal Court has concluded in paragraph No.9 that the delay is not of 72 days, but is of only 42 days. The application for condonation has been rejected on the ground of vague pleadings.

5. I find that the appeal Court has taken a pedantic view of this matter. The law is well settled by the Honourable Supreme Court in the matters of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107] and Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [(2013) 12 SCC 649].

6. While considering an application for condonation of delay, if the conduct of the applicant does not suffer on account of malafides, laches or oblique motives, such an application should be considered on the basis of whether the applicants

would be rendered remediless and whether all doors of litigation would be closed upon him, if condonation is refused. So also, it needs to be seen whether the delay is inordinate and sufficient reasons for seeking condonation have not been adduced.

7. In the facts of this case, the deceased / original defendant was suffering from renal disease and as a consequence could not participate in the suit. After he passed away, within a month of the judgment of the trial Court, the petitioner / widow collected all the documents even during her mourning period and filed the RCA. In my view, the appellate Court should have shown sensitivity while dealing with such an application, wherein neither delay, laches nor ulterior motives are attributable to widow, nor can the delay be termed as being deliberate or inordinate.

8. Considering the above, this petition is allowed. The impugned order dated 9.6.2016 is quashed and set aside and MARJI No. 77 of 2015 is allowed. The appellate Court shall register the RCA filed by the petitioner / widow. The learned counsel for the petitioner submits that she would appear before the Court on 28.8.2017 and shall file a copy of this order on record in the event the Writ has not reached the appellate Court

by that time.

9. After recording the appearance of the petitioner, who is the appellant, the appeal Court shall issue notices to the respondents in the appeal.

(RAVINDRA V. GHUGE, J.)

...

akl/d