

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 192 OF 2017
IN
APPEAL FROM ORDER (ST.) No. 2899 OF 2017

Dattagiri Maharaj @ Dileep Achrekar
through C.A. Shri Ramesh Y. Mane ... Applicant
Vs.

Vishwambhar Harihar Pandit (Decd.)
through LR & Ors. ... Respondents

Mr. T.D. Deshmukh, Advocate for the applicant.

Mr. S.G. Deshmukh i/b. Ramdas A. Shelke, Advocate for the respondents.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 1st September, 2017.

P.C.:

Leave to amend forthwith.

2. By this Civil Application, the applicant seeks condonation of delay of 15 years 347 days in filing the Appeal from Order.

3. This Application can be allowed after taking down the chronology of the events. This Appeal from Order is filed by the appellant/original defendant against the order of remand dated 17th November, 2000 passed by the Appellate Court by setting aside the order of the trial Court of dismissal of suit. Being aggrieved by the

said order of the Appellate Court, the appellant/original defendant filed Second Appeal (St.) No. 5349 of 2001 on 9th February, 2001. The said Appeal was refused for non-compliance of office objections on 20th August, 2003. Meanwhile, the original suit which was remanded and restored to the file of the trial Judge was also dismissed for default. The original plaintiff/respondent preferred an application for restoration of suit and condonation of delay, which was rejected and against that, the respondent/original plaintiff filed Writ Petition No. 11966 of 2016.

4. The learned counsel for the applicant and respondent both have produced the order dated 20th December, 2016 passed in Second Appeal (St) No. 5349 of 2001 that by consent, the Second Appeal was restored and the suit was also restored. On the same day, i.e., on 20th December, 2016, permission was sought to withdraw Second Appeal, as it is a order of remand and the Appeal against it lies under Order 43(1)(u). The Writ Petition by consent was also allowed and suit filed by the respondent was also restored on 21st December, 2016. Therefore, on 30th January, 2016 Appeal from Order is filed. In view of this admitted chronology by both the counsel, the Application for condonation of delay is allowed in view of

section 14 of the Limitation Act. Registry is directed to number the Appeal from Order.

5. Civil Application No. 192 of 2017 is allowed and disposed of accordingly.

6. In the course of arguments on the Application for condonation of delay, the learned counsel for the respondents has submitted that after restoration of the suit to its original file before the learned Civil Judge Junior Division, Radhanagari, District Kolhapur, the learned Judge has directed DILR to carry out measurements of the adjacent lands of the plaintiffs and defendants and DILR has submitted report on 23rd August, 2017. Therefore, this Appeal from Order has become infructuous.

7. Considering this submission, this Appeal from Order is also heard at this stage.

8. The learned counsel for the appellant has submitted that on merit, this Appeal from Order is required to be considered as no ground is made out to pass the order of remand and Appellate Court

ought not to have remanded the matter under Order 41 Rule 23(a) of the Code of Civil Procedure.

9. Without going into the merits of the order of the Appellate Court, as the trial Court has already acted upon the order of remand and DILR after carrying out the measurements has submitted the report on 23rd August, 2017, I am of the view that the Court on the order of remand has already acted upon and this Appeal from Order is infructuous.

10. All contentions are kept open before the trial Court, as no finding is given by this Court on merit.

11. Appeal from Order is disposed of.

(MRIDULA BHATKAR, J.)