

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 232 OF 2015
IN
CIVIL REVISION APPLICATION (ST.) No. 10251 OF 2015
WITH
CIVIL REVISION APPLICATION (ST.) No. 10251 OF 2015

Harichandra Parshuram Patil (since decd.)
through LR & Ors.

... Applicants

Vs.

Bhalchandra Gajanan Patil & Ors.

... Respondents

Mr. Jayesh M. Joshi, Advocate for the applicants.

Mr. S.M. Oak i/b. Sagar A. Joshi, Advocate for respondent No. 1.

Ms. Jui A. Nerurkar, Advocate for respondent nos. 7(1) to 7(8), 8 to 14,
16(1), 16(2), 17(1) to 17(4).

CORAM: MRS. MRIDULA BHATKAR, J.

DATE: 5th June, 2017.

P.C.:

By this Civil Application, the applicants pray that the delay of
316 days in filing the Civil Revision Application be condoned.

2. The learned counsel for the applicants submitted that the
applicants have filed Regular Civil Suit No. 339 of 1989 before the
learned Civil Judge Junior Division, Bhiwandi for injunction
simplicitor, which was decreed by the judgment and the order dated
26th June, 1998 restraining the respondents/defendants from creating

third party interest in the aforesaid property. Thereafter, the respondents filed Application No. 102 of 2013 under Order 9 Rule 13 of Code of Civil Procedure requesting the Court to quash and set aside the said judgment and order dated 26th June, 1998, which was passed ex-parte. The learned counsel for the applicants submitted that summons of the said Application under Order 9 Rule 13 of CPC was served only on plaintiff No. 2. He pointed out that the suit was filed by 13 plaintiffs and summons were never served on the addresses of 13 plaintiffs. However, without taking into account the said position, the learned Judge by order dated 24th February, 2014 allowed the said Application under Order 9 Rule 13 of CPC and restored the matter. The learned counsel further submitted that the applicants had knowledge of this order in the month of February, 2015, as the respondents created third party interest in the said property in between. The learned counsel has submitted that immediately after obtaining the certified copy of judgment and order, the applicants filed Civil Revision Application. Hence, there is a delay of nearly 316 days which is explained by the applicants in paragraphs 5 and 6 of the Civil Application.

3. The learned counsel for respondent No. 1 while opposing this

Application has submitted that there is no sufficient reason to explain this delay.

4. Respondent nos. 2 to 7 though served are not present. The learned counsel for respondent nos. 7(1) to 7(8), 8 to 14, 16(1), 16(2), 17(1) to 17(4) submitted that they are supporting the case of the applicants.

5. Perused the contents in paragraph nos. 5 and 6. It appears that for want of proper service, the applicants were not aware of the order dated 24th February, 2014 and could not challenge the same. This reason given is found sufficient and hence delay of 316 days in filing the Civil Revision Application is condoned.

7. Civil Application No. 232 of 2015 is allowed.

8. The learned counsel for the applicants has pointed out the order dated 2nd September, 2016 passed by my predecessor wherein he has observed that "Considering the nature of the order passed, the parties are put to notice that in case the application for condonation of delay is allowed, the Revision Application will be

taken for consideration on the same date”.

9. In view of the order dated 2nd September, 2016, Civil Revision Application is also heard.

10. Perused the order dated 24th February, 2014 by which the learned Civil Judge Junior Division, Bhiwandi has allowed the Application No. 120 of 2013 which is filed under Order 9 Rule 13 of Code of Civil Procedure and have set aside the judgment and decree dated 26th June, 1998. As observed by this Court earlier that the applicants/original plaintiffs were not served with summons of Application No. 102 of 2013, which was preferred by the respondents/original defendants. It was necessary for the learned trial Judge to examine whether proper service was made on all the plaintiffs or not. The learned Judge has not discussed the issue of service and passed a very cryptic order which is not expected. The said order needs to be set aside.

11. The learned counsel for respondent no. 1, while opposing this Civil Revision Application, has asked for time. However, considering the impugned order itself, there is no point in keeping this matter

pending. The Regular Civil Suit is of 1989 and the judgment and decree which is set aside is of 1998. Therefore, the impugned order dated 24th February, 2014 is hereby set aside. Application No. 102 of 2013 is hereby revived. There is no necessity to give further notice to the parties concerned, as the original plaintiffs are now aware of this Application. Hence, notice is waived by all the respondents of the said Application. All the parties to appear before the trial Court on 19th June. 2017 and the respondents therein be allowed to file their reply. Both the parties are to be given opportunity of hearing and then Application no. 102 of 2013 is to be decided on merits. All the points regarding limitation, maintainability etc. are kept open and to be decided on merits.

12. Civil Revision Application is allowed.

(MRIDULA BHATKAR, J.)