

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10629 OF 2015

Maruti Ramchandra Tilekar (decd) through LRs
Rajendra Maruti Tilekar and others ... Petitioners
Vs.
Dnyaneshwar Ananda Gaikwad ... Respondent

Mr. Sachin S. Punde for Petitioners.
Mr. Vijay S. Gharat for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 12, 2017

P.C. :

Heard Mr. Punde, learned Counsel for petitioners and Mr. Gharat, learned Counsel for respondent at length. Rule. Mr. Gharat waives service for respondent. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'plaintiffs', have challenged the judgment and order dated 23.04.2015 passed by the learned Ad-hoc District Judge-5, Pune in Miscellaneous Civil Application No.1067 of 2012. By that order, the learned District Judge condoned the delay of 4 years 2 months and 5 days in filing substantive appeal under Section 96 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') challenging the judgment and decree dated 26.08.2009 passed by the learned 10th Joint Civil Judge Senior Division, Pune in Regular Civil Suit No.1217 of 1994.

3. Plaintiffs had instituted Regular Civil Suit No.1217 of 1994 against the respondent, hereinafter referred to as 'defendant No.1', defendant No.2-State of Maharashtra and defendant No.3-Sub Divisional Officer, Bhore Sub Division, Pune inter alia for declaration and perpetual injunction. During the pendency of the Suit, plaintiffs took out applications at exhibit-5, 24 and 40 for injunction. By common judgment and order dated 29.10.1994, applications were allowed. Aggrieved by that decision, defendant No.1 preferred Miscellaneous Civil Appeal No.519 of 1994 on 29.10.1994. Appeal was dismissed on 17.01.1995.

4. Pending this Suit, plaintiffs also instituted another Suit, namely, Regular Civil Suit No.23 of 1996 and took out application at exhibit-5 as defendant No.1 was likely to obtain loan by giving security of the suit property. During the pendency of the Suit, plaintiffs took out application exhibit-5 for temporary injunction which was allowed on 26.06.1996. Defendant No.1 preferred Miscellaneous Civil Appeal No.286 of 1996, which was dismissed in default on 03.01.1998. Regular Civil Suit No.1217 of 1994 was decreed by the learned trial Judge on 26.08.2008. In pursuance of that order, Circle Inspector certified the mutation entry No.11642 on 04.05.2009. Aggrieved by this order, defendant No.1 preferred R.T.S. Appeal under Section 247 of the Maharashtra Land Revenue Code, 1966 (for short 'Code') before the S.D.O. Appeal was dismissed on 18.02.2010. Defendant No.1 preferred Second Appeal before the Additional Collector, Pune, which was dismissed on 04.12.2010. Defendant No.1 thereafter preferred Revision Application before the Additional Commissioner, Pune Division, Pune, which was dismissed on 14.08.2012. Defendant No.1 thereafter moved the State Government by filing Appeal. Appeal was dismissed on 31.10.2013. It is only thereafter defendant No.1 preferred appeal

challenging the judgment and decree dated 26.08.2008. As there was a delay in filing the appeal, he took out application for condoning the delay of 4 years, 2 months and 5 days. Plaintiffs resisted that application by filing reply. By the impugned order, the learned District Judge has allowed the application. It is against this order, plaintiffs have instituted the present Petition.

5. Mr. Punde submitted that defendant No.1 was present almost on all dates in the Suit and also at the time of delivering judgment on 26.08.2008. He was fully aware of the decision rendered in the Suit. In pursuance of that decision, plaintiffs moved the Circle Inspector for entering their names as also for effecting mutation entry. Thus, this action was purely consequential based upon the decision of the trial Court.

6. During the pendency of the Suit, applications were taken out by the plaintiffs as exhibit-5, 24 and 40, which were allowed. Defendant No.1 also took out application exhibit-47 raising preliminary issue of jurisdiction, which was also decided in favour of the plaintiffs on 29.09.1994. Defendant No.1 preferred Miscellaneous Civil Appeal, which was dismissed. Not only that, in another Suit filed by the plaintiffs, injunction application was allowed and aggrieved by that decision, defendant No.1 preferred appeal. Thus, defendant No.1 cannot claim to be ignorant of provisions of law. Not only that, he also filed private complaint against the plaintiffs in the Court of Judicial Magistrate, First Class, Saswad for offences punishable under Sections 323, 504, 427, 452, 379, 506 read with Section 34 Indian Penal Code, 1860 as also Sections 3(1) and 10 of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 (for short 'Atrocity Act'). By order dated 20.06.2009, the learned Magistrate dismissed the complaint. The

learned Magistrate also referred to the evidence adduced by the parties and observed that there were several disputes between the parties and with a view to harassing accused persons, defendant No.1 is using Atrocity Act as a weapon. Defendant No.1 - complainant failed to produced sufficient, cogent, reliable and trustworthy evidence to show any offence committed by the accused persons. He has taken me through the application made by the defendant No.1 for condonation of delay and in particular paragraphs 6 to 9 thereof and submitted that no case is made out for condoning the delay.

7. On the other hand, Mr. Gharat supported the impugned order. He submitted that defendant No.1 was appearing in person. He submitted that in paragraph 8 of the application, defendant No.1 contended that he is educated upto 11th Standard and he is not fully conversant with the legal provisions. He relied upon Section 158 of the Code and instead of challenging the order passed by the Civil Court, he initiated proceedings before the Revenue Authorities. The time spent by the defendant No.1 in prosecuting the proceedings before the Revenue Authorities deserves to be excluded as per Section 14 of the Limitation Act. He submitted that the impugned order is purely discretionary order and as the learned District Judge came to the conclusion that sufficient cause is made out, this is not a fit case for invocation of powers under Article 227 of the Constitution of India.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The short question is whether defendant No.1 has made out sufficient cause for condoning the delay of 4 years, 2 months and 5 days. In the case of *State of Nagaland Vs. Lipok AO*, (2005) 3 SCC 752 wherein it is held by the Apex Court that what counts is not the

length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The expression “sufficient cause” should be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.

9. As noted earlier, defendant No.1 appeared in person before the Civil Court. He had preferred Appeals challenging the interlocutory orders before the District Court. Thus, it cannot be said that he was totally unaware of the procedure as also rights to challenge the order if it is adverse to his interest. He has also filed application exhibit-47 for raising preliminary issue of jurisdiction, which was also dismissed. Not only that, he had already filed complaint against the plaintiffs before the Judicial Magistrate First Class, Saswad. Perusal of the record shows that mutation entry clearly records passing of decree on 26.08.2008. Perusal of the record shows that the mutation entry was made on the basis of decision dated 26.08.2008. Thus, even at this stage the defendant was aware of this decision of the Civil Court. It is also evident from record that defendant No.1 was present all along in the Suit as also at the time of delivering judgment on 26.08.2008. Mutation entry was made on the basis of the judgment of the trial Court, which was purely a consequential action. Instead of challenging the decision of the Civil Court, defendant No.1 went on filing proceedings challenging the mutation entry. It is settled principle of law that the mutation entry does not confer title. Perusal of the impugned order shows that in paragraph 9, the learned District Judge observed that defendant No.1 is a well educated person and having knowledge about Court proceedings. He was present before the trial Court on every day and on the date of argument as well as judgment . The learned District Judge was of the

view that as defendant No.1 was prosecuting remedies before the Revenue Authorities, the delay deserves to be condoned. In my opinion, the learned District Judge failed to consider the provisions of Section 14 of the Limitation Act. In order to avail benefit of Section 14, party has to establish that he was prosecuting the remedies bonafide in Court without jurisdiction as challenge was to the mutation entry. As far as the challenge raised before the Revenue Authorities, it cannot be said that he was prosecuting those remedies before the Authorities without jurisdiction. That apart, he has to also establish that he was prosecuting those remedies in good faith. From the material on record, it is abundantly clear that defendant No.1 was not prosecuting that remedy in good faith. Hence, the learned District Judge was not justified in condoning the delay, more so, in view of paragraph 9 of the impugned order. As noted earlier, delay is of 4 years 2 months and 5 days. Hence, impugned order cannot be sustained and deserves to be set aside thereby dismissing the Miscellaneous Civil Application. Hence, the following order:

- b. Miscellaneous Civil Application is dismissed.
- a. Impugned order dated 23.04.2015 passed by the learned Adhoc District Judge in Miscellaneous Civil Application No.1067 of 2012 is set aside.
- c. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)