

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9370 OF 2017

Sanjay K. Kale	..	Petitioner.
v/s.		
Saj Enterprises	..	Respondent.

Mr. Laxman Deshmukh i/b. Shyamsunder Solanke, for the Petitioner.
Mr. Sandeep Naik, for the Respondent.

CORAM: M.S.SANKLECHA, J.
DATE : 21st AUGUST, 2017.

P.C:-

Moved for urgent reliefs.

This Petition under Article 227 of the Constitution of India, challenges the order dated 15th November, 2016 passed by the Joint Civil Judge, Senior Division, Pune. The impugned order dated 15th November, 2016 dismissed the Petitioner's application for condonation of delay to file application to set aside the ex-parte order dated 11th July, 2012.

2 The Respondent had filed a Special Civil Suit being Suit No.2004 of 2010 before the Civil Judge, Pune to recover an amount of Rs.38.55 lakhs. On 15th September, 2010, suit was decreed ex-parte against Petitioner, herein.

3 Thereafter on 2nd January, 2013, Respondent herein filed an application for execution of the decree being Darkhast No.1 of 2013 consequent to the order dated 15th September, 2010. In the Execution Application, the Petitioner accepted the order dated 11th July, 2012 and proceeded to compromise the dispute with the Respondent. In that

behalf, he issued a cheque of Rs.10 lakhs in favour of the Respondent. However, that cheque was dishonoured. Thereafter, the Executing Court i.e. the District Court at Beed issued an arrest warrant for the Petitioner for failure to satisfy the Court on non-payment of decretal amount. At that time, Petitioner moved the Aurangabad Bench of this Court in Writ Petition No.3675 of 2015 and by order dated 1st April, 2015, this Court stayed the arrest warrant, on the Petitioner depositing an amount of Rs.5 lakhs on or before 20th April, 2015 and further Rs.10 lakhs i.e. Rs.15 lakhs in the aggregate on or before 15th May, 2015 while posting the Petition itself for consideration on 14th July, 2015. However, Petitioner failed to deposit the amounts as directed, resulting in ad-interim relief being vacated.

4 In the meantime, the Petitioner had filed an application on 21st September, 2013 to set aside the ex-parte decree along with an application for condonation of delay of 7 months and 20 days in filing the same. Before the High Court, it does not seem the aforesaid fact was pointed out as no such reference is found in the order dated 1st April, 2015. In any case, the impugned order records that the only explanation for the delay is that he has failed to collect the documents. This, without mentioning the documents he intended to collect and why he failed to collect the same and how the same resulted in delay. Besides, it also observes the fact that the Petitioner during trial refused to subject himself to cross examination. In the aforesaid circumstances, the impugned order rejected the application for condonation of delay, inter alia, also relying upon the fact that Petitioner himself had accepted the ex-parte order dated 11th July, 2012, evident from attempted compromise of the Darkhast bearing No.1 of 2013.

5 Mr. Deshmukh, learned Counsel appearing for the Petitioner states that application for condonation of delay should have been allowed to do substantial justice. It is submitted that merely because a compromise is attempted between the parties, is no reason not to set aside the ex-parte decree. In support, he submits that the issue is covered in his favour by the decision of the Supreme Court in ***Bhagmal and Others v/s. Kunwar Lal and Others (2010) 12 SCC 159***. The aforesaid decision is completely distinguishable as it was a case where a compromise were arrived at between the parties before the ex-parte decree was passed and in terms of a compromise, that the Plaintiff therein would withdraw the suit. It was on that assurance that the Defendant therein did not attend the hearing leading to an ex-parte decree. In such a case, the Court held that the application for setting aside the ex-parte order be allowed. In this case, in the Execution proceedings, the Petitioner accepted the decree and assured the Aurangabad Bench of this Court that he would pay the decretal amounts and yet failed.

6 Mr. Deshmukh also placed reliance upon the decision of the Supreme Court in M/s. ***GMG Engineering Industries & Others v/s. M/s. ISSA Green Power Solution & Others AIR 2015 SC 2675***, in particular, upon paragraph 8 thereof which states that a sufficient cause is to receive liberal construction so as to advance substantial justice, particularly, when there is no negligence or want of bona fide on the part of the Applicant, seeking condonation of delay. In the present facts, as is evident from the impugned order, the conduct of the Petitioner has been far from bona fide.

7 In fact, the conduct of the Petitioner in this case itself, dis-entitles the Petitioner to any relief in the extra ordinary jurisdiction of this Court. In any event, the impugned order dated 15th November, 2016 in the present facts calls for no interference under Article 227 of the Constitution of India.

8 Accordingly, **Petition** is **dismissed**. No order as to costs.

(M.S.SANKLECHA,J.)