

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11099 OF 2015

Ananda Yashwant Mali ... Petitioner
Vs.
Sarala Yashwant Mali and others ... Respondents

Mr. Sandeep S. Koregave for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 05, 2017

P.C. :

Heard Mr. Koregave, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.1', has challenged the judgment and order dated 23.07.2015 passed by the learned District Judge-3, Kolhapur below exhibit-15 in Regular Civil Appeal No.113 of 2012. By that order, the learned District Judge allowed application exhibit-15 made by the respondent No.1, hereinafter referred to as 'plaintiff', for condoning the delay of 27 months in filing the cross-objections.

3. Plaintiff instituted Suit for partition and separate possession against the defendant No.1 and three others. By judgment and decree dated 21.01.2012, the learned trial Judge partly decreed the Suit and declared that plaintiff and defendants No.1, 3 and 4 have 1/4th share each in the suit properties among other directions. Aggrieved by this decision, defendant No.1 preferred appeal under Section 96 read with Order 41, Rule 1 of C.P.C. in the District Court on 06.02.2012. Plaintiff filed cross-objections under Order 41, Rule 22 of C.P.C. on 16.10.2014. She thereafter filed application exhibit-15 on 19.01.2015 for condoning the delay in filing the cross-objections. By the impugned order, the learned District Judge has allowed that application. It is against this

decision, defendant No.1 has preferred this Petition.

4. In support of this Petition, Mr. Koregave strenuously contended that plaintiff should have filed application along with the cross-objections, which were filed on 16.10.2014. However, plaintiff filed application exhibit-15 on 19.01.2015. Apart from that, no explanation is given for condonation of delay of 27 months in filing the cross-objections. He has taken me through the application exhibit-15 as also the reply filed by the defendant No.1 opposing that application. He submitted that as there is delay of 27 months, the learned District Judge was not justified in condoning the delay. The learned District Judge relied upon the decision of this Court in ***State of Maharashtra Vs. Kalu Ladku Mhatre, 2011 (6) ALL MR 242***. The said decision arises out of the proceedings under Land Acquisition Act, 1894. For all these reasons, he submitted that the learned District Judge was not justified in extending the time to file cross-objections.

5. With the assistance of Mr. Koregave, I have perused the material on record. Perusal of the material on record shows that plaintiff's Suit for partition was partly decreed by the learned trial Judge, as indicated earlier. Aggrieved by that decision, defendant No.1 preferred appeal. Plaintiff has filed cross-objections on the ground that defendant No.2 - Shirmabai Yashwant Mali died during the pendency of the Suit. She had bequeathed her share in favour of the plaintiff by executing registered Will Deed, which is referred in the judgment delivered in Regular Civil Suit No.564 of 2011. As the said Suit was pending while deciding the present Suit, the learned trial Judge did not make any comment and kept that issue open. Regular Civil Suit No.564 of 2011 was decided by the learned trial Judge on 07.08.2014 and the learned trial Judge held that the Will executed by defendant No.2 is legal, valid and proper. Plaintiff,

therefore, filed cross-objections on the basis of the decision rendered in Regular Civil Suit No.564 of 2011, and therefore, claimed that cross-objections are filed in time. Plaintiff therefore, did not file application for condoning the delay in filing the cross-objections. As the defendant No.1 raised objections, plaintiff filed application exhibit-15 on 19.01.2015 for condoning the delay and by the impugned order, the learned District Judge has allowed that application.

6. For the reasons stated in the cross-objections by the plaintiff and more particularly paragraphs 1 and 2 thereof as also in view of paragraph 7 of the decision in **State of Maharashtra** (*supra*), I do not find that the learned District Judge has committed any error in passing the impugned order. For the reasons recorded in paragraph 3 of the impugned order, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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