

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.528 OF 2014

Bapusaheb Krishnaji Waghmare (decd) through
legal heirs Venubai B. Waghmare and others ... Petitioners
Vs.
Shripati Hariba Jambhale and others ... Respondents

Mr. Vishwanath S. Talkute for Petitioners.
Mr. Pradeep J. Thorat for Respondents No.1 to 3.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 25, 2017

P.C. :

Heard Mr. Talkute, learned Counsel for petitioners and Mr. Thorat, learned Counsel for respondents No.1 to 3 at length. Mr. Talkute submitted that by order dated 22.01.2014, this Court issued notice to the respondents, returnable on 12.02.2014. By subsequent order dated 15.10.2015, on the application made on behalf of the petitioners, leave to implead defendants No.2 to 5 in the Petition was granted and Petition was posted for admission on 29.10.2015. In the meantime, this Court permitted the petitioners to serve added respondents by private advocate's notice and file affidavit of service to that effect. Accordingly, Mr. Talkute has tendered the affidavit of service dated 29.10.2015 enclosing therewith acknowledgments of respondents No.4 to 7. The same is taken on record and marked 'X' for identification. Mr. Talkute states that respondents No.4 to 7 are duly served. However, none appears on their behalf. Rule. Mr. Thorat waives service on behalf of respondents No.1 to 3.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged judgment and order dated 03.08.2013 passed

by the learned 3rd Joint Civil Judge, Junior Division, Satara below exhibits-52, 56 and 58 in Regular Civil Suit No.567 of 1982. Petitioners, hereinafter referred to as 'plaintiffs', have taken out application exhibit-52 on 11.01.2013 for setting aside abatement against defendant No.1, Hariba Laxman Jambhale. They took out application exhibit-56 on 11.01.2013 for condoning the delay in filing the application for bringing legal representatives of defendant No.1 on record. They also took out application exhibit-58 on 11.01.2013 for bringing legal representatives of defendant No.1 on record. By the impugned order, the learned trial Judge has rejected applications exhibits-52, 56 and 58.

3. In support of this Petition, Mr. Talkute submitted that plaintiffs have instituted another Suit namely Regular Civil Suit No.547 of 1982 for specific performance of contract as also for possession of the suit property therein. That Suit was dismissed in default on 07.01.2012. Plaintiffs took out application for restoration on 06.08.2012. In that Suit, legal representatives of defendant No.1 were already brought on record. He submitted that in that Suit, Miscellaneous Application for restoration was taken out. By order dated 31.08.2015, the learned trial Judge allowed that application and restored Regular Civil Suit No.547 of 1982. In the present Suit, they took out applications exhibits-52, 56 and 58 for bringing legal representatives of defendant No.1 on record as also for setting aside abatement order and condoning the delay in filing the application. The learned trial Judge rejected the application on the ground that false statement was made to the effect that legal representatives of defendant No.1 were brought on record in Regular Civil Suit No.547 of 1982. He submitted that there was a bonafide mistake and in fact legal representatives of defendant No.1 Hariba Laxman Jambhale were brought on record and this fact was mentioned

in Miscellaneous Application No.56 of 2012 filed in Regular Civil Suit No.547 of 1982. He, therefore, submitted that the learned trial Judge should have allowed the application as the mistake was bonafide and neither deliberate nor intentional.

4. On the other hand, Mr. Thorat supported the impugned order. He relied upon the decision of ***Pundlik Jalam Patil (D) by LRs Vs. Executive Engineer Jalgaon Medium Project and another, 2008 (17) SCC 448***, and in particular, paragraphs 11 to 15 thereof. He submitted that incorrect statement made in the application itself is sufficient to reject the application without any further inquiry as to whether the averments made in the application reveal sufficient cause to condone the delay. The party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on his part by condoning delay.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that petitioners herein have instituted two Suits namely Regular Civil Suit No.547 of 1982 and 567 of 1982. It is also not in dispute that legal representatives of defendant No.1, Hariba Laxman Jambhale were brought on record in Regular Civil Suit No.547 of 1982 as he died pending the Suit. That Suit was dismissed in default on 07.01.2012. In that Suit, application for restoration was made on 06.08.2012. Perusal of Miscellaneous Application No.56 of 2012 shows that in paragraph 6, it was specifically stated that Hariba Laxman Jambhale died and though several attempts were made for bringing details of legal representatives of Hariba Jambhale, plaintiffs could not get those details. The death certificate of Hariba Jambhale was obtained only on 15.05.2012 and the details of his legal representatives were

obtained on 02.08.2012. By order dated 31.08.2015, the learned trial Judge allowed that application and restored Regular Civil Suit No.547 of 1982.

6. Aggrieved by this decision, defendants in that Suit instituted Writ Petition No.8399 of 2016. By order dated 10.01.2017, that Petition was dismissed.

7. In the present case, the learned trial Judge has rejected the application for the reasons recorded in paragraph 3 of the impugned order. The learned trial Judge rejected the application principally on the ground that LRs of Hariba were not brought on record in Regular Civil Suit No.547 of 1982. The contention of the plaintiffs in application exhibit-56 that LRs of Hariba were brought on record in Regular Civil Suit No.547 of 1982 is incorrect. It was further observed that in Miscellaneous Application No.56 of 2012 filed in Regular Civil Suit No.547 of 1982 for condoning the delay in filing application for restoration, it was stated that plaintiff obtained Hariba's death certificate on 15.05.2012. However, in application exhibit-56 filed in Regular Civil Suit No.567 of 1982, it was contended that death certificate of Hariba was obtained on 26.12.2012. In the case of **Pundlik Jalam Patil (D) by LRs (supra)**, the Apex Court has observed in paragraph 11 thus,

“11. Whether the respondent made incorrect statement in the application seeking condonation of delay?

There is no dispute whatsoever that the respondent being the beneficiary of the acquisition has been duly impleaded as a party respondent in the reference cases as is required in law. It not only appeared in the matter through a properly instructed counsel but also filed its written statement opposing the claim for enhancement of compensation but did not choose to lead any evidence whatsoever. In the application filed in the High Court the plea taken by the respondent is as under:

"The applicant submits that, although the applicant being Acquiring Body, was arrayed as opponent in the said reference, the opponent no. 4 herein (Original Opponent No. 1) S.L.A.O. or his subordinate contested the said reference by filing written

statement. Therefore, this applicant was unaware about the stand taken by S.L.A.O. as well as the impugned judgment and award."

This averment in the application on the face of it is totally incorrect. The Law & Judiciary Department as early as on 13.4.2000 i.e. to say within the period of 15 days from the date of the award of the Reference Court communicated its decision to acquiesce in the decision of the Reference Court and communicated the same to all the concerned including the beneficiary of the acquisition. It is not the case that the Executive Engineer did not receive the said communication. Having received the said communication the respondent did not act in the matter and initiated any steps for filing the appeals if it was really aggrieved by the decision of the Reference Court. There is no doubt whatsoever in our mind that the respondent made totally incorrect statement in the application filed in the High Court. We express our reservation as to the manner in which a public authority conducted itself in its anxiety to somehow get the relief from the court. In our considered opinion incorrect statement made in the application seeking condonation of delay itself is sufficient to reject the application without any further inquiry as to whether the averments made in the application reveal sufficient cause to condone the delay. That a party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on his part by condoning delay. [See: (1993)1SCC 572]."

8. In my opinion, the said decision is not applicable to the facts of the present case. Instead of mentioning that the legal representatives of defendant No.1 were brought on record in Miscellaneous Application No.56 of 2012, plaintiffs have averred in application at exhibit-56 that they were brought on record in Regular Civil Suit No.547 of 1982. The fact however remains that legal representatives of defendant No.1 were brought on record in Regular Civil Suit No.547 of 1982. In view thereof, the learned trial Judge was not justified in rejecting the application. Hence, impugned order is liable to be set aside and is accordingly set aside. Petition succeeds. Exhibits-52, 56 and 58 stand allowed. Rule is made absolute accordingly with no order as to costs.

(R. G. KETKAR, J.)