

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 122 OF 2017

Shankar Appa Chougule

..Applicant.

Vs

Anandrao Bhausahab Fadatare,
since deceased, through LRS:
1A.Mangala Anandrao Fadatare
and Ors.

.. Respondents

Mr. Tejpal S. Ingale, Advocate for Applicant.

CORAM : R.G.KETKAR,J.
DATE : 20/02/2017

PC:

1. Not on Board. At the request of Mr.Ingale, taken up for admission. Heard Mr.Tejpal Ingale, learned counsel for the applicant at length.

2. By this Application under section 115 of the Code of Civil Procedure,1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as 'plaintiff', has challenged the Judgment and order dated 5.11.2016 passed by the learned District Judge-II, Islampur below Exhibit-148 in Regular Civil Appeal No. 24 of 2004. By that order, the learned District Judge allowed the application made by respondents 2(a) to 2(d), hereinafter referred to as 'defendants no.2(a) to 2(d)' in filing the cross objections.

3. Plaintiff had instituted Regular Civil Suit No.145 of 1997 for declaration and injunction. By the Judgment and decree dated

26.9.1997, the learned trial judge decreed the suit and declared that the defendants have no right to obstruct or interfere with the possession of the plaintiff over the suit lands as he is a tenant in it. The defendants were permanently restrained from obstructing and interfering with the possession of the plaintiff over the suit lands till termination of his tenancy by following due process of law. Aggrieved by that decision, defendant no.1-Anandrao Bhausaheb Fadatare preferred Regular Civil Appeal No.24 of 2004. Defendant no.2-Jotiram Tukaram Damane neither filed cross objections nor substantive appeal against the decree. Defendant no.2-Jotiram was served on 8.4.2004. He died on 8.1.2012 leaving behind defendants no.2(a) to 2(d). Defendants no.2(a) to 2(d) filed application Exh.117 on 9.7.2013 for permitting them to file cross objections. On 13.8.2013, the application was allowed and cross objections were taken on record at Exh.124. On the same day, Appeal as also the cross objections were allowed. The Trial Court's decree was set aside and suit was remanded to the trial Court by giving opportunity to defendants no.1 and 2 to file written statement.

4. Plaintiff preferred Appeal from Order No.996 of 2013 in this Court. By order dated 23.12.2014, this Court allowed the appeal mainly on the ground that no application for condonation of delay was made by defendants 2(a) to 2(d) for taking cross objections on record. This Court, therefore, remitted the matter to the

appellate court and gave opportunity to defendants no.2(a) to 2(d) to file application for condonation of delay for filing cross objections. Accordingly after remand, defendants no.2(a) to 2(d) filed application at Exh.148 for condonation of delay in filing cross objections. By the impugned order, the learned District Judge has allowed the application and condoned the delay subject to payment of costs of Rs.3000/- payable to the plaintiff. It is against this order, the plaintiff has instituted present Civil Revision Application.

5. In support of this application, Mr.Ingale submitted that defendant no.2 did not come with the case that he was not duly served with the suit summons. However, in the cross objections, defendants no. 2(a) to 2(d) have taken up this plea. He further submitted that delay has to be computed from 2004 when defendant no. 2 was served on 8.4.2004 and not from the date when legal representatives of defendant no.2 were brought on record. He submitted that as delay is computed from 8.4.2004, the learned District Judge was not justified in condoning this enormous delay.

6. I have considered the submissions advanced by Mr. Ingale. I have also perused the material on record. Perusal of the impugned order shows that the learned District Judge has considered the decision of the Apex Court in Mahadeo Govind Garge Vs. Special Land Acquisition Officer, (2011) 6 SCC 321.

The Apex Court has observed thus:

“The Civil Procedure Code is a law relating to procedure and procedural law is always intended to facilitate the process of achieving ends of justice. The Courts normally favour the interpretation which would achieve the said object. The provisions of procedural law which do not provide for penal consequences in default of their compliance should normally be construed as directory in nature and should receive liberal construction. The court should always keep in mind the object of the statute and adopt an interpretation which would further such cause in light of attendant circumstances. To put it simply, the procedural law must act as a linchpin to keep the wheel of expeditious and effective determination of dispute moving in its place. The procedural checks must achieve their end object of just, fair and expeditious justice to the parties without seriously prejudicing the rights of any of them.

However, strict construction of a procedural law is called for where there is complete extinguishment of rights, as opposed to the cases where discretion is vested in the courts to balance the equities between the parties to meet the ends of justice which would invite liberal construction. For example, under Order 41, Rule 22 CPC, cross objections can be filed at any subsequent time, even after expiry of statutory period of one month as may be allowed by the court. Thus, it is evidently clear that there is no complete or indefeasible extinguishment of right to file cross objections after the expiry of statutory period of limitation provided under the said provision. Cross objections within the scheme of Order 41, Rule 22 CPC are to be treated as separate appeal and must be disposed of on same principles in accordance with the provisions of Order 41 CPC.

The Court has to give precedence to the right of a party to put forwards its case. Unnecessary and avoidable technical impediments should not be introduced by virtue of interpretative process. At the same time any irreparable loss should not be caused to a party on whom the right might have vested as a result of default of other party. Furthermore, the courts have to keep in mind the realities of explosion of litigation because of which the Court normally takes time to dispose of the appeals. It would be a travesty of justice, if after passage of substantial time when the appeal is taken up for final hearing a cross objector who was heard and participated in the hearing at the admission stage itself claims that the limitation period for him to file his cross

objection will commence only from the date of service of a fresh notice on him or his pleader, in terms of Order 41, rule 22 CPC. Such an interpretation would jeopardise the very purpose and object of the statute and prejudicially affect the administration of justice. It is trite that justice must not only be done but must also appear to have been done to all the parties to a lis before the court.

The cross objections are required to be filed within the period of one month from the date of service of such notice or within such further time as the appellate court may see fit to allow depending upon the facts and circumstances of the given case. Since the provisions of Order 41 Rule 22 CPC itself provide for extension of time, the courts would normally be inclined to condone the delay in the interest of justice unless and until the cross objector is unable to furnish a reasonable or sufficient cause for seeking the leave of the court to file cross objections beyond the statutory period of one month."

7. Apart from this, in the case of State of Maharashtra Vs Kalu Ladku Mhatre, 2011(4) Mh.L.J. 741. This Court in paragraphs 6 and 7 has observed thus:

"6. Thus, under Sub Rule 1 of Rule 22 of Order XLI of the said Code, a power has been conferred upon the Appellate Court to extend the time to file Cross Objection. The Appellate Court can grant such further time as it may see fit to allow. The Sub Rule 1 of Rule 22 does not lay down that sufficient cause is required to be shown by the respondent. As the said Code vests the power to extend the time to file Cross Objection in the Appellate Court, it is not at all necessary for the respondent in Appeal to invoke Section 5 of the Limitation Act, 1963. Section 5 of the Limitation Act reads thus:

"Extension of prescribed period of certain cases – Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfied the Court that he had sufficient cause for not preferring the appeal or making the application within such period."

7. The last part of Sub Rule 1 of Rule 22 of Order XLI deals with the grant of extension of time for filing of Cross Objection and Section 5 of the Limitation Act deals with the extension of time to prefer an Appeal. Section 5 of the Limitation Act incorporates a condition precedent of the appellant satisfying the Appellate Court that he had sufficient cause for not preferring the Appeal within the prescribed period of limitation. Sub Rule 1 of Rule 22 of Order XLI does not incorporate the stringent requirement of establishing a sufficient cause. Thus, a wide power to extend the time to file Cross Objection has been vested in the Appellate Court. Though there is no requirement of establishing sufficient cause within the meaning of Section 5 of the Limitation Act, in the application for seeking extension of time to file Cross Objection, brief reasons for delay will have to be set out. A wider discretion has been conferred on the Appellate Court under the Sub Rule 1 of Rule 22 than what is conferred by Section 5 of the Limitation Act. The power to extend time under Sub Rule 1 of Rule 22 of Order XLI of the Code has to be liberally exercised in case where a Cross Objection is sought to be filed before the Appeal is heard for final hearing.

8. In view thereof, I do not find that the learned District Judge has committed any error in condoning the delay in filing the cross objections. It is also material to note that the learned District Judge has earlier remitted the matter to the trial Court by giving opportunity to defendants no.1 and 2 to file written statement which shows that no written statement was filed by defendants no.1 and 2. Subject to this, Applications fails and the same is dismissed. All contentions of the plaintiff in the cross objections are expressly kept open.

(R.G.KETKAR, J.)