

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (A) NO.57 OF 2014
IN
APPEAL AGAINST ORDER NO.5449 OF 2014

(Shri Kamalkishore Sitaramji Gupta Vs. Shri Laxminarayan Devishankar Gupta and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri Abhay Bhide, Advocate for Appellant.

CORAM: DR. (SMT.) SHALINI PHANSALKAR-JOSHI, J.

DATE: 13th JULY, 2017.

Civil Application (A) No.5/2016:

This is an application seeking condonation of delay for setting aside the order dismissing the appeal against respondent Nos.9, 10, 11, 12, 13, 14-C, 15 and 17. For failure of the appellant to take necessary steps, no sufficient cause is made out to condone the delay and to restore the appeal against these respondents. The application stands dismissed.

Civil Application (A) No.6/2016:

This is an application for granting permission to the applicant to correct the cause title of the appeal memo for substituting the correct addresses of the respondent Nos.9, 10, 11, 13, 14-C and 17. In this application also as, no sufficient cause is made out for not giving such addresses at earlier stage and the matter being tagged since 2014, the application stands dismissed.

Civil Application (A) No.57/2014:

This is an application for condonation of delay of 144 days in filing the appeal against the order dated 26.06.2013. Respondent Nos.1 to 8 and 16 to 18 are duly served, but not appeared. The application is dismissed for default against respondent Nos.9 to 14-C and 15 and 17.

For the reasons given in para 2 and 3 of the application, as sufficient cause is made out. The delay is condoned against the served respondents. The application is allowed and appeal be registered against the respondent Nos.1 to 8 and 16 to 18.

Appeal Against Order Stamp No.5449/2014:

This appeal is preferred against the judgment and order dated 26.06.2013 passed by Joint Civil Judge, Senior Division, Amravati in R.M.J.C. No.61/2009 filed under Order 33, Rule 1 of the Civil Procedure Code, for permission to institute the suit as an indigent person. As per the contention of the appellant, he is having a share in the ancestral property, which comes to Rs.40,74,075/-. Therefore, he has to pay court fees stamp of Rs.62,430/-. As he is unable to pay such huge court fee, he has filed the application under Order 33, Rule 1 of the Civil Procedure Code before the Trial Court, seeking permission to file the suit as an indigent person.

This application came to be resisted by some of the respondents contending *inter alia* that the appellant is having more than sufficient means to pay the Court fee

stamp. He is the owner and possessor of the car bearing No.MH-1/1111 worth Rs.60,000/-. He also owned Luna TFR bearing No.MZR-1627 worth Rs.8000/-. Further, he is owner and possessor of one motor cycle bearing No.MH-27 M-4708 worth Rs.25,000. He is having colour television worth Rs.12,000/- and the sofa-set worth Rs.15,000/- and several other articles i.e. gold and silver ornaments worth Rs.1,00,000/-. Further he is also having the bank balance and F.D.R. in the Bank. It was also contended that the appellant was doing the business on commission basis and getting income of Rs.15,000/- per month. He was also the owner and possessor of the two shops worth Rs.15,00,000/- and as the appellant has suppressed all these sources of income and the property, his application cannot be entertained and needs to be dismissed.

In support of his application, the appellant is examined himself and deposed that he has no source of income other than disputed property. However, during the cross-examination, he has admitted that he is educated upto B.A. M.P.A. and since 1979 to 2001, he was working as P.T. Teacher in college. Further, he has filed on record the income tax certificate showing that he is earning Rs.40,000/- per year, in the year 2007-2008, and therefore, it follows that his income must have increased at the time of filing of the court fee. The registration certificate of his motor vehicle is also produced on record. Hence, considering his income it has to be held that the Trial Court has rightly come to the conclusion that he is

having movable property more than Rs.1000/-.

The Trial Court has also called for the report of the Collector and which was produced on record showing that appellant owns a house on Plot No.1612 and appellant has concealed this information from the Court.

If one considers the evidence of the appellant as recorded before the Trial Court and the provisions of Order 33, Rule 1 of the Civil Procedure Code, then it is apparent that the application of the appellant for permission to sue as an indigent person was rightly rejected by the Trial Court. Though the appellant has contended that except the suit property, he does not have any property, the documents filed on record including the report of the Collector falsify him. Hence, considering, sufficient sources of income available to appellant, no interference is warranted in the impugned order passed by the Trial Court of rejecting his application for permission to sue as an indigent person. The appeal, therefore, holds no merit. Hence, stands dismissed.

On the request of the learned counsel for appellant, period of four weeks is granted to the appellant to pay the deficit court fee stamp.

JUDGE