

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.177 OF 2017
(Saroj Vishnu Bhawe Vs. Marathwada Mahila Shikshan
Samittee, Chauraha, Aurangabad, through its President
Mr.S.K.Shelke)

Mr.Swapnil S.Patil h/f Mr.S.C.Sarda, Advocate for the applicant.
Mr.A.S.Shelke, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 26/07/2018

PER COURT :

1. The applicant / original plaintiff is aggrieved by the order dated 05/07/2017 by which the Civil M.A. No.229/2013 filed by the original defendant seeking condonation of 2190 days has been allowed subject to payment of Rs.5,000/- as costs.

2. Learned Advocate for the applicant has strenuously criticized the impugned order. Contention is that she had preferred RCS No.1102/1998 seeking perpetual injunction against the respondent. The suit property is a plot CTS No.17854 M.C.5-17-53 at Maljipura, Aurangabad admeasuring 250 x 80 feet. The suit was decreed by judgment dated 13/01/2005.

3. The respondent preferred an appeal alongwith an application for condonation of delay which was allowed by order dated 28/06/2006. The appeal was registered as RCA No.227/2006. The said appeal was dismissed for want of prosecution on 06/02/2007.

4. The respondent preferred MARJI No.229/2013 on 21/03/2013 seeking condonation of delay of 2190 days which is more than 6 years. By the impugned order dated 05/07/2017, the said delay has been condoned by imposing costs of Rs.5,000/-. Reliance is placed upon the judgment of this Court in the matter of Rajendra Namdeorao Akre Vs.Rajkumar Bhalerao Balbudhe and another [2016(1) Mh.L.J.184], wherein this Court has quashed a similar order and sustained the order of dismissal in default.

5. Learned Advocate for the respondent/Society relies on an affidavit in reply filed on 26/07/2018. It is contended that the respondent is an Institution, which is a public trust running a special school as *Praudh Mahila Vidyalaya* since 1956 on 100% grant-in-aid. This is the only school in the entire State which offers condensed courses for adult women, widows or destitutes and even deserted women, who were compelled to give up learning due to circumstances beyond their control. Even today, the said trust

continues to offer such courses in order to cause the upliftment of such unfortunate women.

6. It is then submitted that the petitioner seeks to injunct the respondent, not on the basis of her title over the suit property, but merely because she claims to be in possession. It is learnt that she has now offered the said land to a developer and once the development takes place over the property, it would be impossible for the respondent/Trust to regain the same. Reliance is placed on the judgment of the Hon'ble Apex Court in the matter of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107] and Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [2013(12) SCC 649].

7. There can be no dispute that a sleeping litigant would not be assisted by the Court. However, at the same time, if a property which is claimed by a Trust and which operates a Girls High School on such a property is at issue, this would be a factor which cannot be ignored. There is quite a delay caused by the respondent in overlooking the second order of "dismissed in default" dated 06/02/2007 which is sought to be set aside by filing an application on 21/03/2013. It is obvious that the applicant is suffering the

rigours of litigation since her mid sixties. Today she is stated to be about 78 years of age and in frail health.

8. I, however, find that if the contention of the respondent turns out to be true that the applicant/original plaintiff is likely to acquire the suit property by fraud, it would cause a miscarriage of justice if the delay is not condoned.

9. In the case of Rajendra Namdeorao (supra), the first appeal was dismissed in default on 3 occasions on 02/05/2009, 03/06/2011 and again on 23/11/2011. Thereafter, it was restored. This Court has, therefore, rightly interfered in the said case. However, in the instant case, the contentions of the respondent are such that it needs to be investigated as to whether the applicant has succeeded in acquiring injunction merely on the ground of being in possession or whether she could retain the possession and seek to hand over the property to a developer posing that she has a right and title over the suit property.

10. It is in the above backdrop that after scrutinizing the comparative hardships and the balance of convenience that I am of the view that the Appellate Court has not erred in passing the

impugned order of condoning the delay.

11. I am, however, convinced that the costs awarded are quite meager. The respondent deserves to suffer the effects of having neglected the proceedings. The rigours suffered by the applicant also need to be softened by compensating her with substantial costs. I am, therefore, allowing this petition partly to the extent of enhancing the costs to Rs.25,000/- (Rs.Twenty Five thousand only) inclusive of the costs granted by the Appellate Court vide the impugned order.

12. Learned Advocate for the petitioner makes a statement on instructions that the petitioner has only prayed for quashing of the impugned order and has not prayed for any costs and therefore does not desire to accept the said costs. It is informed by the learned Advocate for the respondent that Rs.5,000/- (Rs.Five Thousand only) has already been deposited in the Appellate Court at Aurangabad. He prays that if the original plaintiff does not want the costs, the said amount may be donated to the District Legal Aid Services at Aurangabad and the amount of Rs.20,000/- (Rs.Twenty Five Thousand only) can be donated for the treatment of poor patients in Aurangabad.

13. As such, the amount of Rs.5,000/-, already deposited, shall be donated to the District Legal Aid Services at Aurangabad. The respondent shall deposit an amount of Rs.20,000/- with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of **“Dean, Government Medical College and Hospital, Aurangabad CSR Fund”**), on or before 24/08/2018 and shall produce a receipt of such receipt before the Appellate Court on or before 31/08/2018.

14. Since this Court has not granted any interim relief in terms of prayer clause “C”, though the learned Advocate for the applicant states that he had never pressed for such interim relief, the Appellate Court shall decide the restoration application as expeditiously as possible and in any case on or before 31/12/2018.

(Ravindra V.Ghuge, J.)

Kranti
Hansraj
Shekatkar

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Kranti Hansraj
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