

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.9913 OF 2017  
(Shalik s/o Motiram Patil Vs. Jagatrao s/o Dangal Patil and  
others)

Mr.P.B.Patil, Advocate for the petitioner.  
Mr.A.S.Sawant, Advocate for respondent Nos. 1 and 2.

( CORAM : Ravindra V.Ghuge, J.)

DATE : 11/07/2018

PER COURT :

1. Despite service of Court notice, respondent Nos. 3 to 7 have not appeared in this proceedings.
2. I have heard the learned Advocates for the appearing parties on 10/07/2018 and even today.
3. Learned Advocate for respondent Nos. 1 and 2 has strenuously supported the impugned order. It is contended that a well reasoned order has been passed. Delay of 1 year and 2 months in filing the Misc.Civil Appeal before the Appellate Court is sought to be condoned. Sufficient cause has not been established. Inordinate delay and laches are attributable to the petitioner.

4. He submitted that the suit property, which is an agricultural land admeasuring 3 hectares and 29 R's, was agreed to be sold by the respondents by an agreement to sell dated 29/04/1995 for a consideration of Rs.1,21,000/-. The purchaser has paid Rs.71,000/- in 1995. Since the landlord petitioner herein was not executing a sale deed and was not handing over the land to the purchaser, a Special Civil Suit No.23/2009 was filed by him. After the suit was decreed ex-parte on 21/06/2011, the residual amount of Rs.50,000/- was deposited in the Court by the purchaser/plaintiff under the decree.

5. It is further stated that even in the Trial Court, this petitioner had caused a delay in the recording of evidence and the matter had travelled upto this Court. Since he is in possession, he is deliberately causing the delay so as to frustrate the claim of respondent Nos. 1 and 2. As the price of the land has escalated, the petitioner has surreptitiously sold the land to added defendant Nos. 3 to 7, who are in collusion with the petitioner. It is, therefore, prayed that this petition be dismissed with heavy costs.

6. I find that the delay of 1 year and 2 months caused in filing a Misc.Civil Appeal, cannot be said to be an inordinate delay. So also,

this Court is concerned with the delay caused in filing of a Misc.Civil Appeal. In so far as the conduct of the petitioner is concerned, the same could be considered by the Appellate Court which is to deal with the Misc.Civil Appeal, if this Court is to condone the delay. An agricultural land is the suit property and the ex-parte decree, if not tested in law, is likely to cause an irreparable harm to the petitioner, who would have to part with the said land. The issue of 16 years in between the signing of the agreement to sell and the filing of the Special Civil Suit is also a matter, which needs to be considered.

7. In view of the above, I find that the ends of justice would be met by imposing costs upon the petitioner as a condition for condonation of delay. At this juncture, learned Advocate for the original plaintiffs submit that they are in possession of the suit land and heavy costs may be imposed on the petitioner, out of which a portion could be donated for the treatment of the patients who are below poverty line.

8. Considering the above, this petition is partly allowed. The impugned order dated 20/07/2016 is quashed and set aside. MCA No.8/2015 is allowed and the delay of 1 year and 2 months is condoned subject to the petitioner depositing costs of Rs.15,000/-

before the Appellate Court on or before 03/08/2018, failing which, this order shall stand recalled and the order of the Appellate Court dated 20/07/2016 shall stand restored. So also, an amount of Rs.5,000/- (Rs.Five thousand only) shall be deposited by the petitioner 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 27/07/2018 and the receipt evidencing the said deposit shall be produced before the Appellate Court on or before 03/08/2018, failing which, this order shall stand recalled and the order of the Appellate Court dated 20/07/2016 shall stand restored.

9. Needless to state, this Court has not expressed any opinion as regards the merits of the Misc.Civil Appeal filed by this petitioner before the Appellate court which would now be registered pursuant to this order.

( Ravindra V.Ghuge, J.)