

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

**954 CIVIL APPLICATION NO.12143 OF 2017
IN
SECOND APPEAL (ST) NO.31286 OF 2017**

DR. YASHWANTRAO BHASKARRAO DESHMUKH ..Applicant
VERSUS
RAGHUNATH KISAN SAINDANE ..Respondent

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Shri K.C. Sant, Advocate for Applicant;
Shri S.P. Brahme, Advocate, i/b. Shri V.P. Patil,
Advocate for Respondent.

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CORAM : PR. BORA, J.
Dated: August 07, 2018

PER COURT :

1. The present application is filed seeking condonation of delay, which has occurred in filing the present Second Appeal by the applicant against the Judgment and order passed by Ad-hoc District Judge-1, Amalner in Regular Civil Appeal No.31 of 2012 on 8th September, 2015. The delay occurred in filing the appeal is stated to be of 650 days.

2. The respondent had filed Spl. Civil Suit No.2 of 2001 in the Court of Civil Judge, Senior Division at Amalner. In the said civil suit, though the present appellant was duly served, did not cause his appearance in the matter and the suit, therefore, came to be decided *ex-parte* against the present applicant. The

suit was filed seeking specific performance of contract. Since the trial Court did not grant decree of specific performance in favour of the plaintiff and only directed the refund of the earnest money in favour of defendant, he preferred the First Appeal No.1196 of 2006 before the High Court as at the relevant time, the pecuniary jurisdiction was with the High Court. The present appellant was duly served in the said appeal and he appeared in the said matter through the Counsel. In the meanwhile, because of the enhancement in the pecuniary jurisdiction of the Civil Courts, the said First Appeal No.1196 of 2006 was sent back to the District Court for its disposal in accordance with law.

3. After the said appeal was sent back to the District Court, it was renumbered as Regular Civil Appeal No.31 of 2012. In the said matter, the present appellant is shown to have been served by a public notice. The record further shows that, the appellant did not appear in the said matter and ultimately the said Regular Civil Appeal came to be decided by the Ad-hoc District Judge-1 vide Judgment and order passed on 08.09.2015. The First Appellate Court allowed the appeal and granted the decree of specific performance in favour of the appellant i.e.

present respondent. The present respondent thereafter filed the execution proceedings before the Civil Court at Amalner vide Special Darkhast No.9 of 2016.

4. It is the contention of the present applicant that, on or about 15.09.2017 he received the knowledge from one of his relatives namely Vilas Pandharinath Deshmukh that, certain activities were going on in respect of the suit land. It was also allegedly informed by said Vilas Deshmukh to the present applicant that, the present respondent was talking about taking possession of the suit land. It is the further contention of the applicant that, after having come to know about the aforesaid activities, he rushed to Amalner, made an enquiry about the proceeding and got the knowledge that, the suit filed against him was partly decreed against him, thereafter the appeal was preferred and it was allowed *ex-parte*. It is the further contention of the applicant that, he immediately asked his lawyer to apply for certified copies of the Judgments passed by the Courts below and all other necessary documents and after receiving the certified copies of the said documents, without loss of any time preferred the Second Appeal before this Court and also filed the

present application seeking condonation of delay, which has occurred in filing the Second Appeal by him.

5. It is contended that, the delay occasioned is unintentional and for the bonafide reasons. The applicant has prayed for condoning the delay, so that he can get an opportunity of agitating his matter on merits. The application so filed has been resisted by the respondent. The respondent has filed his detailed affidavit-in-reply and has also filed certain documents on record.

6. Shri K.C. Sant the learned Counsel appearing for the applicant submitted that, the decisions rendered by the Courts below are admittedly without participation of the present applicant, in other words are *ex-parte* decisions. Learned Counsel submitted that, the applicant is residing at Nashik since last about 20 years and this fact is well within the knowledge of the present respondent. The learned Counsel submitted that, the applicant intermittently used to go to his village to look after his agriculture land, however he was not residing on the address, which is appearing in record of the suit as well as in record of

the appeal. The learned Counsel submitted that, the applicant has placed on record the relevant documents *prima facie* evidencing that, since last 20 years he is residing at Nashik. The learned Counsel invited my attention to the copy of the Aadhar card, wherein the address of the applicant is of Nashik. The learned Counsel also brought to my notice the voters list to show that, the applicant is residing at Nashik and not within the jurisdiction of Amalner. The learned Counsel brought to my notice the Bank pass book of the present applicant, to demonstrate that, he is permanently residing at Nashik. The learned Counsel submitted that, since the applicant was completely unaware of the proceedings, which were going on in the Courts below, he could not take the steps in filing the present appeal within the period of limitation.

7. The learned Counsel further submitted that, the evidence which has come on record clearly indicates that, the alleged transaction was not of sale and the amount, which was given by the present respondent allegedly by way of earnest money was refunded by the applicant and was accepted by the respondent. The learned Counsel invited my attention to the

averments in that regard in the Judgments passed by the Courts below. The learned Counsel submitted that, in the document of agreement of sale itself such endorsements were made and were noticed by the Court. According to learned Counsel it is thus evident that, alleged transaction was not of agreement of sale. In the circumstances, according to the learned Counsel, the opportunity needs to be given to the present applicant for agitating his matter on merits.

8. The learned Counsel placed his reliance on the Judgment of the Hon'ble Apex Court in the case of **Ramlal and Others Vs. Rewa Coalfields Ltd, AIR 1962 Supreme Court 361** to urge that, the delay is to be computed after the decision of the particular case or the particular judgment, against which, the appeal is intended to be filed by the litigant. The learned Counsel submitted that, the evidence *prima facie* placed on record by the applicant is sufficient to reach to the conclusion that, the applicant was absolutely unaware of the impugned Judgments and the moment, he got the knowledge of those judgments, within shortest possible time, he has filed the Second Appeal with the present application seeking condonation of

delay.

9. The learned Counsel further submitted that, settled legal position is that, the words 'sufficient cause' as are employed in Section 5 of the Limitation Act are to be construed liberally and while deciding such application the approach of the Court shall be justice oriented and not to shut the doors forever for a litigant, who is bonafide fighting for his rights. The learned Counsel has, therefore, prayed for allowing the application.

10. Shri S.P. Brahme, the learned Counsel appearing for the respondent resisted the contentions raised on behalf of the applicant. The learned Counsel submitted that, the applicant was throughout negligent in prosecuting the matter and as such, his inaction or negligence cannot be rewarded by condoning the delay, which has not been properly explained. The learned Counsel submitted that, it does not lie in the mouth of the applicant that, he was completely unaware of the proceedings, in the Courts below. The learned Counsel submitted that, the applicant was duly served with the summons / notice of the civil suit, but he chose not to appear in the said matter and as such,

the suit was partly decreed *ex-parte* against him. The learned Counsel submitted that, thereafter the appeal was preferred by the present respondent and in the said appeal before the High Court also, the applicant was duly served and he caused his appearance in the said matter through his Counsel. The learned Counsel further submitted that, having considered the facts as aforesaid, the contention of the applicant that, he was not aware of the proceedings has to be rejected.

11. The learned Counsel further submitted that, the contention of the applicant that, he has left Amalner permanently and started residing at Nashik is also incorrect. The learned Counsel brought to my notice the document filed on record along with the affidavit-in-reply of the respondent evidencing that, name of the appellant – plaintiff in voters list at Amalner is still existing. The learned Counsel also invited my attention to two other documents, which are the agreements of sale executed by the present applicant in the meanwhile period, wherein also the address of the applicant is shown not of Nashik, but of Amalner and the same address, which is there in the suit plaint and in the memo of Regular Civil Appeal.

12. The learned Counsel relying upon the Judgment of the Hon'ble Apex Court in the case of **B. Madhuri Goud Vs. B. Damodar Reddy, (2012) 12 Supreme Court Cases 693** and more particularly inviting my attention to the observations made in para nos.10 and 13 therein submitted that, in view of the law settled by the Hon'ble Apex Court, the application filed by the applicant deserves to be dismissed.

13. The learned Counsel further submitted that, the present respondent is litigating for his rights since 2001 and at present not only that the decisions passed by the Courts below are in his favour, but the execution has also been substantially completed. The learned Counsel submitted that, after the appeal was allowed by the First Appellate Court, the necessary permissions are obtained by the present respondent from the competent authorities and thereafter the sale-deed has also been executed in favour of the present respondent by the Court Commissioner. The learned Counsel submitted that, till the said time the applicant kept quiet and thereafter had sought interim order for protecting his possession and that is the reason that,

though the sale-deed has been executed in favour of the present respondent, the possession of the suit property is not yet delivered to him. The learned Counsel submitted that, the applicant has failed in making out any case for condoning the delay and as such, prayed for rejecting his application.

14. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. The chronology of the facts as is given by me herein before is not in dispute. Now the question, which falls for my consideration is, whether the applicant can be said to have explained the delay satisfactorily so as to condone the same. The emphasis of the learned Counsel for the applicant was on the point that, the period of delay has to be computed from the date of the decision, which is sought to be impugned in the appeal. The impugned decision is delivered on 08.09.2015 and the present application is filed on 17.09.2017. According to learned Counsel, delay from the said date has been sufficiently explained by the applicant and as such in view of the law laid down in the case of **Ramlal and others Vs. Rewa Coalfields Ltd** (cited supra), the application deserves to be allowed. It, however,

appears to me that, in the facts of the present case, to arrive at a conclusion, whether applicant was really unaware of the Judgments passed by the Courts below or the proceedings which were going on in the Courts below, it would be necessary to look to the overall conduct of the applicant start from the date of service of notice in civil suit and not only in respect of the period after the Appellate Court decided the matter.

15. It is the contention of the applicant in the present application that, only after his relative informed him on 14.09.2017 that, some activities are going on in respect of his land that he made the enquiry about the proceeding and only thereafter got the knowledge that, there was the suit filed against him in the Court of Civil Judge, Senior Division, Amalner, in which there is a decree against him and also got the knowledge that, there was an appeal that also came to be decided *ex-parte* against him. The contentions so raised in the application are apparently unacceptable, in view of the facts, which have come on record. The applicant cannot take a plea that he was not having any knowledge of civil suit filed by the respondent against him for the reason that, the notice of the said

suit was duly served upon him. It is not the case of the applicant that he was falsely shown to have been served though in fact he was not served. It was the choice of the applicant whether to appear in the said suit and to contest it or otherwise. The record shows that, the applicant chose not appear in the said matter and the suit was, therefore, decided *ex-parte*.

16. It is further the matter of record that, the plaintiff himself was not satisfied with the Judgment and decree passed by the Civil Court and as such, he preferred First Appeal No.1196 of 2006 before the High Court. It is also the matter of record that, the notice of the First Appeal before the High Court was duly served upon the applicant and he caused appearance in the said matter through his Counsel. Considering the facts as aforesaid, the applicant cannot deny that, he was not aware that the present respondent had preferred the First Appeal in the High Court. It cannot be believed that, after causing appearance in the First Appeal in the High Court, the applicant did not have made any attempt to know as about the details of the proceedings filed against him and the decision which was rendered by the trial Court in the Special Civil Suit filed by the

respondent.

17. Further, it appears to me that, after filing of the appearance in the First Appeal before the High Court, the applicant was under an obligation to keep track with the said appeal. In the application, nothing has been mentioned by the applicant as to whether he was in touch with his Counsel engaged by him to represent him in the High Court so as to know the progress in the appeal filed against him. If the applicant had not cared for making any such enquiry even periodically with his lawyer to know the progress in the matter, the blame can be attributed only on part of the applicant. Such conduct of the applicant has to be held as his deliberate negligence.

18. It is further the matter of record that, because of the enhancement in the pecuniary jurisdiction, the appeal pending before the High Court, was sent back to the District Court for its decision on merits and again the notice was issued of the said appeal to the applicant. The material on record also shows that, the public notice was ultimately required to be issued and the

applicant was deemed to be served vide the said public notice. The applicant, admittedly did not appear in the said matter. The appeal filed in the year-2006 was pending for decision for long 9 years. It cannot be accepted and believed that, during the said long period of 9 years the applicant at least even once had not have made an enquiry as to what happened to the said appeal filed against him, in which, he had caused appearance initially in the High Court. If it is to be accepted that, he did not make any such enquiry, then the only inference emerges that the applicant was grossly negligent in prosecuting his matter.

19. There cannot be a dispute that, the words 'sufficient cause' in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. However, the Courts have no power to extend the period of limitation merely on equitable grounds. The law of limitation is a substantive law and has definite consequences on the rights and obligations of the parties. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree

holder to treat the decree as binding between the parties. In the circumstances, the legal right which has accrued to the decree holder by lapse of time cannot be lightly or casually disturbed. In the instant matter, as has come on record, not only that the decree of specific performance has been passed in favour of the present respondent, but the sale deed has also been executed in his favour. The law comes to the aid of the persons, who are not negligent. As I have elaborately discussed herein above, the present applicant was noticed to be throughout negligent in prosecuting the matter. The delay caused is directly a result of his negligence, default and inaction on his part. Further, there is reason to believe that, all of his submissions are not honestly made. When the applicant was thoroughly negligent in implementing his rights and remedies, it will be unfair to deprive the respondent, who is litigating for his rights since last 17 years and to deprive him of the valuable right, which has accrued in his favour as a result of his acting vigilantly, by condoning the delay of 650 days committed by the applicant in filing the present Second Appeal. I reiterate that, considering the overall facts and circumstances involved in the present matter, not only the delay, which has been lastly committed by

the present applicant of 650 days in filing the Second Appeal has to be taken into account, but his entire past conduct which reflects his carelessness in prosecuting the matter has also to be considered. For the reasons stated above, I am not inclined to exercise my discretion in favour of the applicant. Hence the following order.

ORDER

- (i) The application is rejected.

(PR. BORA, J.)

Later on :

20. The learned Counsel Shri Sant at this juncture has prayed for continuing the effect of the interim order in Civil Application No.12145 of 2017 passed by this Court on 22.09.2017 so as to enable the present applicant to approach the Hon'ble Apex Court. The request so made is opposed by the learned Counsel appearing for the respondent. However, in the interest of justice, I deem it appropriate to continue the effect of the said order for next eight weeks.

(PR. BORA, J.)

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