

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4264 OF 2017

Narayan Pandurang Raut and ors.	... Petitioners
v/s	
Eknath Savala Roman and ors.	... Respondents

Mr Pramod J. Pawar for Petitioners.
Mr R.C. Barge I/b Mr D.M. barge for Respondents.

CORAM : B.P. COLABAWALLA J.

DATE : 24th NOVEMBER, 2018.

P.C. :-

1. Mr Barge, learned counsel appearing on behalf of the Respondents, states that he has instructions to appear on behalf of all the Respondents and he undertakes to file his appearance within a period of one week from today. The statement is accepted.

2. This Writ Petition has been filed seeking to challenge the order dated 8th February 2017 passed by the Principal District Judge, Satara below Exh.18. Exh.18 was an application seeking to set aside the order of dismissal of the Suit and for condonation of delay of five years one month and eleven days.

3. In the Trial Court, the Petitioners had filed a Suit for a

declaration and injunction (bearing R.C.S. No.300 of 1999) against the Respondents. This Suit was dismissed on 11th July 2003. Being aggrieved by this judgment and decree, the Petitioners preferred an Appeal being R.C.A. No.255 of 2003. After preferring an Appeal, the Petitioners deposited paper-book charges in the Court on 16th February 2005.

4. It is the case of the Petitioner that after depositing the paper-book charges, their Advocate told them that many years will pass before the preparation of the paper-book and unless the paper-book is prepared, the Appeal would not be taken on board for hearing. It is the further case of the Petitioners that they were informed that till then, their presence would not be necessary. It is also the case of the Petitioners that Petitioner No.5, from time to time, contacted their Advocate and inquired with him about the progress of the Appeal. Every time, their Advocate informed Petitioner No.5 that he would inform the Petitioners as soon as the Appeal was fixed for hearing. It also appears that in the meanwhile Appellant No.1 (before the Appeal Court) died on 12th April 2014. When Petitioner No.5 informed the same to his Advocate, the Advocate asked him to collect the death extract of Appellant No.1 and he would thereafter decide as to what was to be done when the Appeal was fixed for hearing.

5. It is the further case of the Petitioner that in December 2015, the Respondents started quarreling with Petitioner No.5 over the dispute pertaining to the suit property. Therefore, on 7th December 2015, when Petitioner No.5 made inquiries, at that time, he found out that the Appeal filed by the Petitioner was dismissed for default on 14th October 2010. Thereafter, the Petitioners collected the necessary papers including the dismissal order and preferred an application for restoration of the Appeal along with an application for condonation of delay. This application was filed on 28th December 2015. It is in this background that it was contended before the Appeal Court that the delay was not because due to any negligence on the part of the Petitioners herein but due to the inaction and negligence of their Advocate in not informing them about the progress of the Appeal.

6. This application for condonation of delay as well as restoration of the Appeal was vehemently opposed by the Respondents by filing their say at Exh.12. The same was resisted by denying almost all material facts pleaded therein. It was the case of the Respondents that the Petitioner was not diligent and was in fact negligent throughout in prosecuting their Appeal and they were falsely blaming their Advocate to get over the enormous delay of

more than five years.

7. On these pleadings, the Appeal Court, in the impugned order, framed a point for determination as to whether sufficient cause was made out to condone the delay of more than five years. In fact, the Petitioners herein were also allowed to lead evidence in support of their case. What is important to note is that only Petitioner No.5 herein led evidence, but from his evidence he was unable to establish that the delay was caused due to any negligence of the Advocate. What is also important to note is that the previous Advocate for the Petitioners (viz. Mr E.K. Shinde) was not examined though they had a chance to do so. Further, even though negligence is attributed to Mr E.K. Shinde, no complaint has been filed against him. The Appeal Court also noted that in the cross-examination of Petitioner No.5, it was admitted that Petitioner No.4 was an employee of a blind school which was managed by the very same Advocate along with other managing committee members and whenever the said Mr Shinde (previous Advocate) visited that School, Petitioner No.4 and the said Advocate met each other. It has been further admitted in the cross-examination that Petitioner No.2 herein and who is the real elder brother of Petitioner No.5, is employed in the Sales Tax Department and is discharging his duties the said office at Satara since the past 25 years. It has been further

pointed out that Petitioner No.2 is traveling from Bakharwadi to Satara for service purposes.

8. Looking to the facts and circumstances of the case as narrated above, in my view, the Appeal Court correctly held that no sufficient cause was made out for condoning such a huge delay of more than five years for restoring the Appeal.

9. What was argued before the Appeal Court was once again reiterated before me by the learned counsel appearing on behalf of the Petitioner. For the reasons that have been stated before the Appeal Court, I am unable to accept these submissions. The Appeal Court has given sufficient opportunity to the Petitioner to show and establish that there was a bonafide reason for such a huge delay of more than five years. The Petitioners have been unable to discharge this burden.

10. Having gone through the impugned order in some detail, I think that the Appeal Court correctly rejected the application (Exh.18) seeking condonation of delay and restoration of the Appeal. I find that the Appeal Court has given proper and cogent reasons for doing the same. I do not think that the order of the Appeal Court suffers from any perversity or is vitiated by any error apparent on

the face of the record that would require my interference under Article 227 of the Constitution of India.

11. Before parting, it would be apposite to refer to the decision of the Supreme Court in the case of H. Dohil Constructions Co.Pvt.Ltd. V/s Nahar Exports Ltd. And another {(2015)1 SCC 680}. In this decision, the Supreme Court has clearly held that a charge by simply throwing the blame on the previous Advocate and without anything more, a party cannot be allowed to explain the delay. The Supreme Court clearly stated that the law assists to those who are vigilant and not those who sleep over their rights. I find that the ratio laid down in the aforesaid decision would clearly apply to the facts and circumstances of the present case. As mentioned earlier, the Appeal of the Petitioners was dismissed as far as back as on 14th October 2010. The application for restoration of the Appeal and for condonation of delay was filed on 28th December 2015 which is after the period of more than five years. There is absolutely no explanation as to why such a huge delay has taken place except for blaming their previous Advocate. This to my mind and with nothing more, cannot be said to be a ground to condone such a huge delay.

12. In view of the foregoing discussion, I find no merit in this

Petition. It is accordingly dismissed. However, there shall no order as to costs.

(B.P. COLABAWALLA J.)