

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5854 OF 2013

The State of Maharashtra,]
Through the Collector, Sangli.] Petitioner

Versus

1. Shankar Mayappa Kamble]
(Since Deceased), Through LRs. :-]
1(A). Akkatai Shankar Kamble,]
Age : 70 years, Occ. Home Maker,]
R/at Savali, Tal. Miraj, Dist. Sangli.]
1(B). Maruti Shankar Kamble,]
Age : 50 years, Occ. Agriculture,]
R/at Savali, Tal. Miraj, Dist. Sangli.]
1(C). Padmavati Baban Hirve,]
Age : 47 years, Occ. Home Maker,]
R/at Naigaon, Mumbai.]
1(D). Shobha Jagdish Mane,]
Age : 45 years, Occ. Home Maker,]
R/at Ghatprabha.]
1(E). Bapuso Shankar Kamble,]
Age : 42 years, Occ. Agriculture,]
R/at Savali, Dist. Sangli.]
1(F). Seema Shyamrao Oval,]
Age : 39 years, Occ. Service,]
R/at Yervada, Dist. Sangli.]
1(G). Sushila Rajaram Mane,]
Age : 36 years, Occ. Labour,]
R/at Jaisinghpur.]
1(H). Kavita Rajan Bhise,]

Age : 33 years, Occ. Tailoring,	]
R/at Titwala, Mumbai.	]
1(I). Sangita Sukhdev Kamble,	]
Age : 30 years, Occ. Labour,	]
R/at Sangliwadi, Dist. Sangli.	]
2. Devasthan Vyavasthapan Samitee,	]
Western Maharashtra, Kolhapur,	]
Balbhim Co-operative Bank Building,	]
Basement C.S. No.240/2, Shivaji Peth,	]
Kolhapur.	] Respondents

Mr. S.H. Kankal, A.G.P., for the Petitioner-State.

Ms. Tanmayi Gadre, i/by Mr. Yogesh S. Sankpal, for Respondent Nos.1(A) to 1(I).

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 14TH MARCH 2018.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Kankal, learned A.G.P., for the Petitioner-State, and Ms. Gadre, learned counsel for Respondent Nos.1(A) to 1(I).

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner-State is challenging the order dated 25th October 2012 passed by the District Judge-1, Sangli, thereby rejecting the Civil

Miscellaneous Application No.286 of 2008, which was filed by the present Petitioner-State to condone the delay caused in filing the Appeal against the Judgment and Decree passed in Regular Civil Suit No.321 of 1994 on 30th August 2006 by the Civil Judge, Senior Division, Sangli.

3. It is the case of the Petitioner-State that, due to the communication gap between the Petitioner and the Office of the District Government Pleader, the information regarding the decision was not communicated to the Petitioner and even after it was communicated, due to pressure of work and some other calamities, like flood situation and the elections, the Petitioner could not take further action to file Appeal in the Court and as a result, there is a delay of about 2 years and 67 days in preferring the Appeal. It is submitted that, the delay is not intentional or deliberate.

4. It is further submitted that, the question involved in the matter is pertaining to the possession of the land, wherein R.T.O. Office is situate. Already the execution proceedings, bearing Regular Darkhast No.61 of 2007, are filed, in which the order of removing the existing structure through the Commissioner has been passed and hence it is submitted that, considering that the Petitioner is the 'State Government', a liberal approach should have been adopted by the Appellate Court, while deciding the application for condonation of delay. The Appellate Court

has not done so and has rejected the Petitioner's application. Therefore, the impugned order passed by the Appellate Court is required to be quashed and set aside.

5. Per contra, learned counsel for the Respondents has given the sequence of the events as to how, since beginning, the Petitioner was aware about the decision of the Trial Court and despite that, throughout, the approach of the Petitioner has been casual, negligent and at no stage any sincere attempt was made to file the Appeal, despite the knowledge about the passing of a 'Decree' and also about the filing of execution proceedings. It is submitted that, the reason given that there was communication gap between the District Government Pleader's Office and the Petitioner, is also refuted, in view of the say given by the Government Pleader that, though the decision was communicated, the Government did not give instructions to the Government Pleader's Office to file Appeal. Thus, it is urged that, on a very vague and general plea, that due to the calamities like flood situation and the elections, the officers of the Petitioner were busy, the condonation of delay, which is of 2 years and 67 days, is sought.

6. In this respect, learned counsel for the Respondents, has placed reliance on the Judgment of the Apex Court in the case of *Post-Master General and Ors. Vs. Living Media India Limited and Anr.*, (2012) 3 SCC 563, wherein, it is held that,

“Merely because the party to the litigation is a Government Department, does not exempt it from explaining the sufficient cause for such delay. The law of limitation binds everybody equally, including Government, and defence by Government of impersonal machinery and inherited bureaucratic methodology cannot be accepted in view of modern technologies being used and available. Absence of diligence by Department in prosecuting the matter established by evidence on record, despite sufficient opportunity given to it, does not justify the condonation of delay.”

7. Thus, according to learned counsel for the Respondents, as the delay in the matter is not satisfactorily explained, the Appellate Court has, by its reasoned order, rightly rejected the Petitioner's application and hence, no interference is warranted in the impugned order passed by the Appellate Court.

8. In my considered opinion, even a cursory glance to the earlier stage of litigation in this case is more than sufficient to show that the Petitioner has never been diligent in prosecuting the matter. It is pertinent to note that, in the Regular Civil Suit No.321 of 1994, which was filed by Respondent No.1 against Respondent No.2 and the present Petitioner, the Petitioner has very much appeared and resisted the said Suit and the 'Decree' was passed in the said Suit, on merits, on 30th August 2006. As per the said 'Decree', Defendant No.2, i.e. the present

Petitioner, was directed to get removed the construction, like wall-fencing, erection of boards etc. within three months from the date of the 'Decree'. Against the said 'Judgment and Decree', Original Defendant No.1 has already preferred Appeal, bearing Regular Civil Appeal No.3 of 2007; whereas, the present Petitioner-State has not preferred Appeal, though the 'Decree' was specifically against it and therefore, Respondent No.1 was constrained to file the execution proceedings, bearing Regular Darkhast No.61 of 2007. The Bailiff's Report shows that, though the notice of the said Darkhast Proceedings was duly served upon the present Petitioner, despite that, no steps were taken by it to prefer the Appeal. The Petitioner had appeared in other Regular Civil Appeal No.3 of 2007, preferred by Defendant No.1, on 10th March 2008, but, did not, at that time, thought it fit to file its own Appeal. In the said execution proceedings, on 4th October 2008, the Executing Court appointed the 'Court Commissioner' for demolition of the encroachment. The notice of the said execution proceedings was duly served, but, at that time also, the Petitioner did not appear or resisted the execution proceedings.

9. It must be noted that, on 22nd October 2008, the Petitioner has filed an application for stay to the execution of the 'Decree' and in the said application, it was categorically stated that, the concerned Department is notified about the decision, but there are no instructions to file an Appeal. Then, on 22nd October 2008 itself, the Executing Court rejected

the application for stay filed in the execution proceedings, bearing Regular Darkhast No.61 of 2007, on the ground that, *“the application for stay to the execution was filed after 10 months from the date of the Judgment; despite service, Petitioner did not appear or defend the same and till date, no Appeal has been filed by the Petitioner”*. Thereafter, on 23rd October 2008, the Petitioner has filed the Appeal, along with the application for condonation of delay. In the Appeal also, Respondent No.1 was arraigned as 'Respondent', though the Petitioner was aware that Respondent No.1 has passed away.

10. The Appellate Court has considered this entire sequence of events and found that, throughout the proceedings, the Petitioner, i.e. the State Government, was fully aware about the 'Judgment and Decree' passed against it, but, despite that, no effective steps were taken for filing of the Appeal and now on a spacious plea that, the officials of the Petitioner-State were busy in the calamities, like flood situation and the elections, it is stated that, Petitioner could not file Appeal in time.

11. The impugned order passed by the Appellate Court shows that, the Petitioner has not led any evidence to support this contention. Thus, on the vague and general plea given that, there was communication gap between the officials of the District Government Pleader and the concerned Department of the Petitioner-State, condonation of delay is

sought and that too, when the said plea is not found to be true and correct, in view of the say filed by the Government Pleader in the execution proceedings. In such situation, when the delay is of substantial period of 2 years and 67 days and the delay is not satisfactorily explained, merely because the Petitioner is a State Government, such delay cannot be condoned.

12. Learned A.G.P. for the Petitioner-State, in this respect, has tried to place reliance upon the Judgment of the Apex Court in the case of *C.K. Prahalada and Ors. Vs. State of Karnataka and Ors., 2008 DGLS(SC) 674*, to submit that, in this reported Judgment, the enormous delay of 2,487 days on the part of the State Government was condoned. However, the very observations made by the Apex Court in the said Judgment are as under :-

“Ordinarily, the Supreme Court could not have condoned such an enormous delay, but keeping in view that the High Court had allowed the First Appeal filed by the State Government, this Court is declined to interfere with the Judgment of the High Court; else, the order would have resulted in setting aside the order of the High Court.”

13. Thus, only in the light of particular facts of the said case, the Apex Court has, even after observing that, it would not have condoned such an enormous delay, upheld the order of the High Court. Therefore, this Judgment cannot be of any assistance to the Petitioner-State.

14. Conversely, the aforesaid Judgment of the Apex Court in the case of *Post-Master General and Ors. (Supra)*, which lays down the general principles, while considering the application for condonation of delay filed by the Government Department, becomes more applicable to the facts of the present case. As held in the said Judgment, the law of limitation binds everybody equally, including Government, and defence that the Government Officials were busy in other duties, cannot be a ground to condone such an enormous delay and, that too, without making any genuine efforts to explain the said delay.

15. In this premise, when the delay does not appear to be on account of bonafide error or genuine reason and the very reason that, there being a communication gap between the Office of the District Government Pleader and the concerned Department of the Petitioner-State, being subsequently given up, on the spacious plea that, the officers of the Petitioner-State were busy in other duties, it has to be held that, the Appellate Court has rightly rejected the application. In the writ jurisdiction of this Court, hence, no interference is warranted in the impugned order passed by the Appellate Court.

16. Writ Petition, therefore, stands dismissed.

17. Rule is discharged.

[DR. SHALINI PHANSALKAR-JOSHI, J.]