

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

WRIT PETITION NO.1032 OF 2016

Kantaram Daya Patil And Ors. ... Petitioners
Versus
Sumit Bachewar And Ors. ... Respondents

.....

Mr.Jayesh Joshi i/by Rohit D. Joshi for the Petitioners.

Mr.K.S. Patil i/by A. S. Patil for Respondent No.1.

Mr.Pushkar Nagpurkar i/by Mr.Rohit Sakhadeo for Respondent No.4.

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CORAM : Ravindra V. Ghuge, J.

DATE : 16 March 2018

P.C. :

1. By this Petition, the Defendants seek to challenge the order dated 4 August 2015 by which an application-Exhibit 84, praying for the recalling of the 'no written statement' order by condonation of 3 years and 4 months delay, has been rejected.

2. I have considered the strenuous submissions of the learned advocates for the respective sides.

3. It is undisputed that Special Civil Suit No.386 of 2009 is filed by the Plaintiffs with regard to a property in Survey No.677, Hissa No.4. The reliefs of specific performance and permanent injunction along with other reliefs, have been prayed for.

4. The original Defendants appeared in the matter on 28 January 2011. The 'no written statement' order was passed on 23 September 2011. An application-Exhibit 84 praying for recalling

of the said order was filed on 10 June 2014.

5. Insofar as condonation of delay is concerned, the Hon'ble Apex Court has crystallized the principles which are to be considered while dealing with an application for condonation of delay, in *Esha Bhattacharjee v/s. Managing Committee of Raghunathpur Nafar Academy* reported in *AIR (2013) S.C. 252*. The principles carved out by Hon'ble Apex Court are indicative of the factors that the Court has to consider while assessing the reasons assigned for seeking condonation of delay.

6. It requires no debate that if an ulterior motive or Laches are attributable to the conduct of the applicant, such an application would not be considered favourably. At the same time, it needs to be borne in mind that if the delay is not condoned, whether the litigant would be rendered remedyless and whether the doors of litigation would be closed for such a litigant.

7. In the instant case, an immovable property is the subject matter of the suit. It is contended that the suit property has a high market value. In this backdrop and in the absence of Laches on the part of the Defendants, if the delay is not condoned, the Defendants would be practically rendered defenceless. Hence the delay could be condoned by imposition of costs which would lead to reducing the rigors of litigation being suffered by the Plaintiffs.

8. Learned counsel for the Petitioners submits that the Petitioners/Defendants are willing to bear the costs of Rs.15,000/-.

Learned counsel for the Respondents/Plaintiffs submits that costs of Rs.1,00,000/- should be imposed on the Petitioners.

9. Taking into account that a valuable immovable property is at issue, I find that an amount of Rs.20,000/- as costs would be appropriate in the facts and circumstances of this case.

10. As such, this Petition is allowed. The impugned order dated 4 August 2015 is quashed and set aside and application-Exhibit 84 is allowed subject to the Petitioners depositing an amount of Rs.20,000/- as costs before the Trial Court on or before the 13 April 2018. No extension will be granted. After the costs are deposited, the Respondent/Plaintiff shall withdraw the said amount without conditions.

11. As the Special Civil Suit No.386 of 2009 is awaiting adjudication and is almost 9 years old, the Trial Court would decide the said suit as expeditiously as possible and preferably on or before 30 March 2019.

(Ravindra V. Ghuge, J.)