

WRIT PETITION NO. 991 OF 2018

Prakash Vasant Pathak	...	Petitioner.
V/s.		
Mangesh Ashok Kale	...	Respondent

Mr. Prathamesh B. Bhargude, for petitioner
Mr. Nikhil Wadikar i/by Nandu Vishnu Pawar, for
respondent

DATE : 26th APRIL, 2018.

P.C. :

1] Heard learned counsel for the petitioner and respondent.

2] By this Writ petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 21.11.2017, passed by 9th Joint Civil Judge Senior Division, Pune, below the application at Exh.29 in Special Summary Suit No.194 of 2016.

3] Application at Exh.29 was filed by the present petitioner for condonation of delay in filing application for leave to defend the suit, the trial Court has, however, rejected the said application. Hence the instant writ petition.

4] As per admitted facts on record, the suit was filed by the present respondent before the trial Court on 11th November, 2016. The Summons of the suit was served on the petitioner on 18.11.2016. The suit was for recovery of an amount of Rs.35,51,000/- alongwith future interest at the rate of 46% per annum. As per case of petitioner, he had borrowed only an amount of Rs.15,00,000/- from the respondent for the purpose of his business and had executed loan agreement dated 3rd August, 2013 and the Promissory Note. Respondent has charged on the said amount interest at the rate of 46% per annum. It was submitted that the petitioner has already paid amount of Rs.20,50,000/- and therefore, the petitioner is not liable to pay any amount as claimed by the respondent in the suit. Even after the appearance in the suit, petitioner had, from time to time, made payments of the amount to the respondent, the details of which were given in the application. The last payment of Rs.50,000/- made on 26.6.2017 by the petitioner was under bonafide impression that the matter would be settled out of Court and respondent will withdraw the suit. Under this bonafide belief he did not appear in the matter though he was served with the Summons for the Judgment. However, as he came to know that suit is not yet withdrawn by the respondent, he was constrained to file this Application for Condonation of delay of 244 days in filing application for leave to defend the suit.

5] This application was strongly resisted by the respondent contending inter-alia that there was no sufficient cause made out by the petitioner to condone the delay especially when the petitioner was aware of filing of the suit, even he has received the Summons for Judgment on 17.1.2017. According to him, the petitioner should have appeared within 10 days thereafter, that is on 26.1.2017. But this application is filed on 29.9.2017. Thus, there is no explanation for the delay of this 8 to 9 months in not appearing in this matter. Hence this application should not be allowed.

6] The trial Court has, after hearing the learned counsel for the parties, held that if since beginning the petitioner was appearing in the suit, then in the absence of any evidence showing that the matter was about to be settled out of Court, no sufficient cause is made out by the petitioner for condonation of delay. It was held that, it is the negligence on the part of petitioner on account of which this application for condonation of delay cannot be allowed and hence the trial Court has rejected the said application. This order of the trial Court is the subject matter of this writ petition.

7] The admitted facts on record are to the effect that the details of the payments which are made by the petitioner in his application in paragraph No.11, copy of which is produced on page Nos.34 and 35 of the petition, are not disputed. These details go to

show that even after filing of the suit, the petitioner has kept on making various payments to the respondent like Rs.1,50,000/- by Demand draft dated 9.11.2015, demand draft dated 14.1.2016 for Rs.3,00,000/-, and so on. Thus, it can be seen that as per details given on this page, totally the amount of Rs.20,50,000/- was paid. It may be true that despite that some amount remained to be due from the petitioner, but the fact remains that the petitioner has made efforts to settle the dispute with the respondent by making payment to the tune of Rs.20,50,000/-.

8] In such situation, it was not proper on the part of the trial Court to hold that there is nothing to show that the petitioner was trying to settle the matter out of court and he was under bonafide belief that the suit would be withdrawn. The observations made by the trial Court to that effect in its order, therefore, cannot be justified.

9] Thus, as per facts on record, there is sufficient material to show that the petitioner was trying to settle the dispute amicably and towards that end he was taking effective steps. Hence, it can hardly be accepted that there was negligence on his part in not appearing in the matter. There is sufficient material to show that he was justified in remaining absent under bonafide impression that the matter would be settled amicably, because even after receipt of the Summons for Judgment, the petitioner has kept on making payments, as can be

seen from the details given in the application. The last payment made by him is by NEFT to the tune of Rs.50,000/- on 26.6.2017.

10] Under these circumstances, it was not proper on the part of the trial Court to reject petitioner's application for condonation of delay. The law in this respect is fairly well settled, as laid down by the Apex Court in the case of *Collector, Land Acquisition, Anantnag and anr -vs- Mst. Katiji and others*, [(1987) 2 SCC 107], which require that the approach of the Court in deciding application has to be liberal as the expression, "sufficient cause" implied by the Legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice, that being the life purpose for the existence of the institution of Courts. Hence, while deciding such application, the Court is required to adopt liberal approach as refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits, after hearing the parties. In the present case, therefore, there is no question of respondent suffering any loss as such as even if the hearing of the suit is delayed a bit, he will be getting the amount claimed in the suit, with interest thereon.

11] The impugned order, therefore, passed by the trial Court,

rejecting the petitioner's application for condonation of delay cannot be sustainable in law.

12] The Writ Petition is allowed.

13] The impugned order passed by the trial Court, is quashed and set aside. As a result, the application filed by the petitioner for condonation of delay, in preferring Application for leave to defend the suit, is allowed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]