

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 4800 OF 2017

Raghunath Ganpat Shinde (Decd)
through his LRs Tukaram R. Shinde & Anr. ... Petitioners
Vs.
Lilabai Ganu Badekar & Ors. ... Respondents

Mr. Tushar Sonawane, Advocate for the petitioners.
Mr. Kalpesh Patil, Advocate for respondent nos. 12 to 14, 16.
Mr. Ulhas T. Naik, Advocate for respondent no. 17.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **12th July, 2018.**

P.C.:

Rule. Rule made returnable forthwith. By consent, Writ
Petition is heard finally and decided at the stage of admission.

2. In this Writ Petition, the order dated 13th January, 2017 passed by the learned Civil Judge Junior Division, Karjat, District Raigad rejecting Civil Miscellaneous Application No. 19 of 2014 of setting aside for condonation of delay in filing the restoration application is challenged. Applicant nos. 1 and 2 are the original defendants. Respondent no. 1 has filed the suit for declaration and other reliefs. Deceased petitioner/original defendant no. 1-Raghunath Ganpat Shinde and petitioner no. 2/defendant no. 2-Sulochana Banote did not remain present though the summons were served on them and

therefore, Regular Civil Suit No. 21 of 2007 was decreed exparte on 22nd August, 2013. By way of execution, when TILR went to survey the suit land, the petitioner Tukaram Raghunath Shinde, who is the son of Late Raghunath Shinde and petitioner no. 2 had knowledge that the suit was decreed against them. Thereafter they applied for certified copies and after obtaining the certified copies, they filed execution application for setting aside exparte decree. There was a delay and so they moved the application for condonation of delay. The said application for delay in filing the restoration application setting aside exparte order is rejected.

3. The learned counsel for the petitioners has submitted that petitioner no. 1 is a son of the deceased petitioner/original defendant no. 1, who died on 8th May, 2012 during the pendency of the suit. He did not appear in the suit and the suit was decided ex-parte. However, the petitioner no. 1/1, being the son, has right in the ancestral property and when he came to know about the decision of the trial Court, he applied for certified copy and after getting all the documents, he filed the Application for setting aside the ex-parte decree along with this Application for condonation of delay. In support of his submissions, the learned counsel relied on following decisions:

- a) Shri Pandit Ramchandra Kulkarni vs. Shri Shrikant Ramchandra Kulkarni & Ors. Reported in 2015(4) ALL MR 861 on the point of delay;
- b) N. Balakrishnan vs. M. Krishnamurthy, reported in (1998) 7 SCC 123.
- c) The order of this Court dated 6th April, 2018 passed in Civil Application No. 376 of 2014 in Second Appeal (St.) No. 1755 of 2009 in the case of Nandu Madhukar Chiplunkar & Anr. vs. Ajit Madhukar Chiplunkar & Ors.

4. The learned counsel for the respondent nos. 12 to 14 and 16 opposed this Petition and has submitted that the petitioners have made false statements that they were were not served but in fact both the petitioners were served and no relief can be granted to the persons who are making false statement before the Court. He has further submitted that petitioner no. 2 by choice remained absent and did not come before the Court. Same is the case of original defendant no. 1. In support of his submissions, the learned counsel relied on the judgment of **Pundlik Jalam Patil (D) by LRs. vs. Exe. Eng. Jalgaon Medium Project & Anr., reported in 2008 (17) SCC 448.** The learned counsel has further submitted that the reasons

given by the petitioners is not sufficient cause. He supported the order dated 13th January, 2017 passed by the learned Civil Judge Junior Division, Karjat, District Raigad rejecting Civil Miscellaneous Application No. 19 of 2014 of setting aside for condonation of delay in filing the restoration application.

5. Heard the submissions. Perused the papers and the rulings cited by the learned counsel for the parties. The ratio in these rulings can be culled out as follows:

In the case of **Shri Pandit Ramchandra Kulkarni** (*supra*), it was point out that the defendants have died during the pendency of the suit and decree was passed against the dead person. The learned Single Judge of this Court held that the decree passed by both the Courts below being against the dead persons to some extent cannot be sustained and allowed the Second Appeal.

6. In the case of **N. Balakrishnan** (*supra*), the Hon'ble Supreme Court has held that the word "sufficient cause" mentioned in Section 5 of the Limitation Act is to be construed liberally. Whether the sufficient cause is acceptable or not is the only criterion in many cases and period of delay is not that relevant.

7. In the case of **Nandu Madhukar Chiplunkar & Anr. (supra)**, this Court has condoned the delay of 493 days in filing the Second Appeal. The explanation that the appellant was from poor class and financial difficulty was accepted by this Court.

8. In the case of **Pundlik Jalam Patil (D) by LRs. (supra)**, the Hon'ble Supreme Court while dealing with Section 5 of the Limitation Act has held that the party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood. However, in the same judgment, the Hon'ble Supreme Court has held that the laws of limitation are based on public policy and therefore, the statutes of limitation are sometimes described as statutes of peace.

9. It appears that the petitioners were served in the trial Court. Both the petitioners did not appear before the Court and so the suit proceeded ex-parte against them. It was finally decided on 22nd August, 2013. However, in between on 8th May, 20 12, the father/- Raghunath Ganpat Shinde died and the petitioner-Tukaram Raghunath Shinde did not have any knowledge about the pendency

of the suit. It is submitted that when the TILR came to measure the suit land, at that time, petitioner Tukaram had knowledge about the pendency of the suit. Thus, the decree passed was against the dead person. After obtaining the certified copies, he moved an application for condonation of delay in filing the restoration application. The fact of death of original defendant no. 1/father and the decree passed against the dead person is a sufficient cause to condone delay. However, the learned Civil Judge Junior Division has noted down in last paragraph that ex-parte decree is already executed and Collector has informed the Court on 8th July, 2015 that partition metes and bounds has been effected as per the decree.

10. In view of this, as the decree is executed, it is up to the petitioner to take appropriate steps in accordance with law.

11. Rule is made absolute as follows:

Delay is condoned with cost of Rs.2,000/-.

(MRIDULA BHATKAR, J.)