

JPP

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

WRIT PETITION NO. 4608 OF 2016

Babu Bhau Ghevade

Since deceased through his heirs & L.Rs.

Mr. Krishna Babu Ghevade & Ors.

... Petitioners.

V/s.

Gopalkrishna Sripad Parulekar

Since deceased through his heirs & L.Rs.

Smt. Bharti Gopalkrishna Parulekar & Ors.

... Respondents.

Mr. S.R. Ganbavale for the Petitioners.

Mr. G.N. Salunke for the Respondents 1A to 1C.

CORAM : Ravindra V. Ghuge, J.

DATE : 15 March, 2018.

P.C. :-

1. The Petitioner – Original Plaintiff now appearing through legal heirs, is aggrieved by the order dated 22 June 2015, passed by the learned District Judge – 1, Gadhinglaj in Civil Misc. Application No.19 of 2013, thereby allowing the said application which was filed by the Original Defendant seeking condonation of delay of 14 years and 6 months.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides. The Respondents herein have relied upon the judgment delivered by the Hon'ble Apex Court in the case of *N. Balakrishnan v/s. M. Krishnamurthy* reported in (1998) 7 SCC 123 to support their contention that while dealing with an application for condonation of delay, the words 'sufficient cause' should be construed liberally.

3 The Hon'ble Apex Court, in so far as matters of condonation of delay are concerned, has laid down the law in *Collector, Land Acquisition, Anantnag & Anr. v/s. Mst. Katiji & Ors.* reported in (1987) 2 SCC 107 and certain principles have been formulated in the matter of *Esha Bhattacharjee v/s. Managing Committee of Raghunathpur Nafar Academy* reported in AIR (2013) S.C. 252.

4. It is therefore crystallized that when an application for condonation of delay is being considered by the Court, it is necessary to assess as to whether the delay was caused deliberately or intentionally and/or whether ulterior/oblique motives can be attributed to the litigant praying for condonation of delay. Normally, no litigant benefits by causing delay in his own cause as it could result in closing the doors of litigation on such a litigant.

5. In the above backdrop, I find that the Appellate Court has passed a cryptic order. What is expected of a Court is to assign reasons while arriving at conclusions in any matter. In the instant case, the Appellate Court has not even taken into account as to whether the delay of 14 years and 6 months deserves to be condoned in the face of the reasons cited by the Appellant. The Appellant, who has now passed away, is said to be an educated person. What were the circumstances in which he could not notice that the Regular Civil Appeal No.62 of 1995 (New No. 128 of 1996) was dismissed in default on 28 September 1998, have not been spelt out in the impugned order. Imposing costs in an undeserving case for condonation of delay, is not the law.

6. It is undisputed that the Appellant before the Appellate Court has not led evidence to justify the reasons assigned in the Misc. Application.

7. As such, I do not find that the impugned order could be sustained and more so in the light of the fact that the Appellant has not led any evidence in the matter. At this juncture, the learned Advocate for the Appellant submits that the Appellant would prefer to lead evidence to justify the reasons assigned and seek condonation of delay.

8. This Petition is therefore partly allowed. The impugned order dated 22 June 2015 is quashed and set aside primarily for the reasons that the learned Judge has failed to consider the rival contentions and has failed to assign reasons for condoning the delay. Misc. Civil Application No. 19 of 2013 is therefore remitted to the Court of the learned District Judge – I, Gadhinglaj. The learned Advocates jointly submitted that the respective sides consent to appear before the Appellate Court on 21 April 2018. The request is accepted. The Appellate Court therefore need not issue formal notices to the parties.

9. Considering the time spent by the litigants in this litigation, I find it appropriate to observe that the Petitioners may lead evidence in support of their application as expeditiously as possible and in any case on or before 30 June 2018, failing which the Appellate Court would close the evidence of the Appellants. If such evidence is led, the Original Defendants would be at liberty to lead evidence. The Appellate Court would endeavour to decide Misc. Civil Application No. 19 of 2013 as expeditiously as possible and in any case, on or before 30 September 2018.

(Ravindra V. Ghuge, J.)