

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

WRIT PETITION NO. 8545 OF 2017

Nimba Deoram Bacchav & Ors.	...	Petitioners
V/s.		
Barku Deoram Bacchav & Anr.	...	Respondents

- Mr.R.R. Dube-Patil i/b. Jay & Co. for the Petitioners.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 19th MARCH, 2018.

P.C. :

1] Heard learned counsel for the Petitioners.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 18th February 2017 passed by the District Judge-2, Malegaon, thereby rejecting the Miscellaneous Civil Application No.72 of 2014 filed by the present Petitioners.

3] The said Application was filed by the present Petitioners under under Section 5 of the Limitation Act for condoning the delay of about 6 years in filing the Appeal against the judgment and decree passed by the trial Court in Special Civil Suit No. 32 of 1999 on 31st

March 1999.

4] It is submitted that the Petitioner No.1, Respondent No.1 and the husband of Petitioner No.2 are real brothers *inter-se*. The suit bearing Special Civil Suit No.32 of 1999 was filed by the Respondent for specific performance of the contract. During the pendency of the said suit, the Petitioners had engaged the counsel to take care of the suit. However, as the Advocate appointed by the Petitioners shifted to Pune and no information was given about it to the Petitioners. Meanwhile, Wanaji and also the Petitioner No.2 suffered from illness and hence, they could not keep the track of the matter.

5] Thereafter, the Petitioners filed Miscellaneous Application No.26 of 2007 for condonation of delay in filing the application for setting aside the ex-parte decree, which was allowed on 11th April 2007. Thereafter, Miscellaneous Civil Application No.16 of 2008 was filed under Order-9 Rule-13 of C.P.C.. It came to be dismissed for default on 14th October 2009. Then, again Miscellaneous Civil Application No.69 of 2013 was filed and it was rejected on 10th August 2014 and hence, the present Miscellaneous Civil Application No.72 of 2014 was filed before the Appellate Court for setting aside the said order.

6] However, the very sequence of the events which is given here-in-above is more than sufficient to exhibit the total carelessness and negligence on the part of the Petitioners in not only prosecuting the suit but thereafter also in prosecuting the Application No.16 of 2008 filed for restoration of the suit. As observed by the trial Court, First Civil Application No.16 of 2008 also came to be dismissed, after the earlier Application No.26 of 2007 and then after the lapse of 7 years, if the Petitioners have approached the Appellate Court, then there can be no justifiable reason for condoning such enormous delay.

7] The Appellate Court has also considered the various admissions given by the Petitioner No.2 Varshabai in her evidence that she had already attended the matters in 2007 and 2008, and in such situation, she cannot cannot contend that she was not aware of the matters.

8] Moreover, assuming that Petitioner Nos.2 to 4 were not aware, Petitioner No.1 Nimba was very much there to protect the interests of the Petitioners. No explanation is offered at all on this score nor he is examined to show what was the cause for him to remain absent in the earlier suit and allow the said suit to be decided *ex-parte* or further proceedings for restoration of the suit came to be dismissed for default. In such situation, this application for

condonation of delay and setting aside the *ex-parte* decree came to be rightly rejected by the trial Court and the said order is further rightly confirmed by the Appellate Court.

9] In writ jurisdiction, when the trial Court has exercised its discretion properly and Appellate Court has confirmed the said finding on re-appreciation of material on record, no interference is warranted in the impugned judgment and order, especially considering that the Petitioners are in occupation of the suit property, the possession of which is deprived from the Respondent/Plaintiff since last so many years despite the decree passed by the trial Court.

10] The Writ Petition therefore, being without merits, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]