

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No. 981 OF 2017
IN
Writ Petition NO. 5470 OF 1990

Sudhakar Gangadhar Bhalekar (since deceased)

Through LRs.

1a) Smt. Madhumati S. Bhalekar

And Ors.

...Applicants

Versus

The United Church Board for

World Ministry

....Respondent

....

Mr.Atul Damle, Senior Advocate i/b Deepak More, Advocate for Applicants.

Mr. R.V. Govilkar, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 26th JUNE, 2018

P.C.

1. Heard Mr.Atul Damle, learned Senior Counsel for the applicants and Mr.R.V. Govilkar, learned counsel for the respondent, at length.

2. By this application, the applicant has prayed for recalling the order dated 8.3.2007 passed by this Court dismissing Writ Petition No.5470/1990 for default after condoning delay of 09 years and 251 days in filing present application.

3. By order dated 8.3.2007, this Court dismissed the Petition in default. Present application is filed on 13.12.2016. Only explanation given is in paragraphs-8 and 9. Paragraphs-8 and 9 read thus:

- “8) The Applicant submits that on 16/02/2007, the father of the learned Advocate fell down in the house at Pune resulting in fracture of Femer Bone and was admitted to the hospital at Pune namely Hardikar Hospital. The Applicant submits that at the same time when his father was admitted to the Hardikar Hospital and the doctor noticed variation in functioning of heart and therefore was shifted to Sahyadri Hospital. The applicants state that at Sahyadri Hospital doctors advised to perform Angio Plasty and according same was performed. The applicants state that after uder going Angio Plasty at Sahyadri Hospital, once again the father of the learned Advocate was shifted back to Hardikar Hospital, which is a Orthopedic Hospital for further treatment.

The applicants state that after shifting of the patient/father of applicants advocate back to Hardikar Hospital, the surgery for fracture injury was performed by the doctors. The applicants states that few days after undergoing surgery at Hardikar Hospital the father of applicants was discharged from Hospital. The Applicant submits that the health of the father of the Advocate on record further deteriorated and unfortunately in April 2007 the father of the Advocate on record passed away. The Applicant submits that right from February 2007 to end of April 2007 the Advocate on record could not keep track of the matter. The Applicant submits that it is also pertinent to note that after the matter was earlier dismissed in the month of January 2007, the papers in the above matter were returned to the Advocate at Wai as asked for by the briefing advocate late shri. Ruikar and brief was returned by clerk of learned Advocate the brief was asked for by the late shri. Ruikar as he was desirous to explore possibility of amicable settlement and the entire papers remained with him. The Applicant submits that thus inadvertently the Advocate appearing for the Petitioner could not keep the track of the matter as a result of which the matter was dismissed on

08/03/2007.

- 9) The Applicant submits that after the possession was lost somewhere in the year 2016, he made enquiries with the lawyer at Bombay and enquiries revealed that the matter was dismissed in the year 2007. In the foregoing circumstances the petitioner having come to know about dismissal started searching case paper and was required to reconstruct the entire case papers and as such there is no fault of petitioner and there is no intention to remain absent deliberately. The Applicant submits that as soon as he came to know about the dismissal of the Petition, he has filed the present Civil Application as early as possible and without any further delay.”

4. A perusal of paragraph-8, extracted above, shows that the papers were taken away by the applicants' Advocate at Wai. It is contended that after dismissal of the Petition in the month of January 2007, the papers were returned to the Advocate at Wai as were asked for by the briefing Advocate late Shri Ruikar as the parties were exploring possibility of settlement and the entire papers remained with him. Even if I accept the explanation given in paragraph-8, no explanation is given in paragraph-9 as to what steps the applicants took between 2007 till filing of the application on 13.12.2016.

5. A perusal of paragraph-9 shows that it is only after the possession was lost by the applicants sometime in the year 2016, he made enquiries with the Lawyer at Bombay and it was revealed that the Petition was dismissed in the year 2007. In my opinion, the

explanations given by the applicants are only till 8.3.2007 and no explanation is given for not taking steps from 2007 till filing of the present application. The applicants have not explained inordinate delay in filing present application.

6. It is also common ground between the parties that the possession of the suit premises is already handed over by one of the heirs of the applicants to the respondent. In view thereof also no case is made out for recalling the order dated 8.3.2007. Hence, Civil Application fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)