

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.155 OF 2017

Mukund Ambadas Bhalerao

age about 65 years, Occ. Retired,
R/o Flat No.4, Rugved Apartment,
Gokuldharm Residency, Uttara Nagari,
Brijwadi, Aurangabad.

... Appellant

-vs-

M/s Gammon India Limited,

A Company Regd. Under Companies Act,
C/o Veer Savarkar Marg, Prabhadevi,
Mumbai 400 025

... Respondent.

Shri V. K. Paliwal, Advocate for appellant.
Respondent served.

CORAM : A.S.CHANDURKAR, J.

DATE : June 12, 2018

P.C.

Notice for final disposal of the appeal was issued to the respondent by framing the following substantial question of law :

“ *Whether the first appellate Court committed an error in refusing to condone delay in filing the appeal under Section 96 of the Code of Civil Procedure, 1908 ?*”

2. On 04/06/2018 the matter was adjourned and kept today. Despite service, the respondent has not chosen to contest the appeal. Accordingly learned counsel for the appellant has been heard finally.

3. The appellant is the original plaintiff who had filed suit for recovery of an amount of Rs.5,25,000/- towards unpaid salary along with interest. The trial Court by its judgment dated 08/01/2016 dismissed the suit. The plaintiff on 21/06/2016 filed an appeal under Section 96 of the Code of Civil Procedure, 1908 along with an application for condonation of delay. In the application it was stated that the certified copy though ready was received on 20/05/2016. The appellant was residing at Aurangabad and hence he could not come to Nagpur for taking necessary steps. So also his mother was ill and was admitted in hospital which also prevented him from taking further steps. This application was opposed by the respondent and the appellate Court by its order dated 14/11/2016 refused to condone the delay. Hence this second appeal.

4. It was submitted on behalf of the appellant that bonafide cause was shown for the cause of delay. The suit itself having been dismissed, the appellant had nothing to gain by filing the appeal belatedly. He submitted that the documents indicating the medical treatment of his mother were placed on record and therefore the reasons for delay ought to have been accepted by the appellate Court.

5. Perused the impugned order. The suit filed by the appellant was dismissed on 08/01/2016. The application for certified copy was made on

09/02/2016 and the same was ready on 18/05/2016. The appeal came to be filed on 21/06/2016. It is a fact that the application for certified copy was made after a day of completion of 30 days from the date of the judgment. The medical certificate indicates ailment of the appellant's mother from the first week of February 2016. In this Court, the appellant has filed an additional affidavit to further substantiating the ground regarding cause of delay. On perusing the entire documents and the explanation furnished, I do not find the delay has been deliberately caused. The reasons mentioned appear to be acceptable and hence I find that the appellate Court ought to have condoned the delay in filing the appeal. The substantial question of law is answered by holding that the appellate Court erred in refusing to condone the delay.

6. Accordingly the order dated 14/11/2016 in Misc. Civil Application No.730/2016 is set aside. After condoning the delay, the appeal filed by the appellant is restored for adjudication on merits.

The Second Appeal is allowed in aforesaid terms. No costs.

JUDGE