

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

SECOND APPEAL NO.282 OF 2017

Manik s/o Samba Bode
And anr.

... Appellant

-VS-

Wasudeo s/o Samba Bobde
And ors.

... Respondent.

Shri Rohit Joshi, Advocate for appellant.

Shri R. S. Charpe, Advocate for respondent Nos.1, 6, 7(a to e), 8.

CORAM : A.S.CHANDURKAR, J.
DATE : June 20, 2018

P.C.

Notice for final disposal was issued on the following substantial question of law :

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

Accordingly learned counsel for the parties have been heard at length.

2. The appellants are the original defendant Nos.1 and 2 in the suit for partition and separate possession filed by respondent No.1

herein. Said suit was decreed on 06/07/2010 and it was held that the Gift-Deed executed by defendant No.1 in favour of defendant No.2 was valid. Each party was held entitled to 1/8th share in the suit property. The defendant Nos.2 and 3 filed an appeal under Section 96 of the Code of Civil Procedure, 1908 seeking to challenge that judgment. There was a delay of one year and four months in filing the said appeal. In the application for condonation of delay it was stated that the father of defendant Nos.2 and 3 was looking after the proceedings and only when he informed them about the decision in October 2011 steps were taken to file the appeal. The appellate Court rejected the application as it found the explanation not warranting acceptance.

3. The learned counsel for the appellants submitted that the appellants were defendant Nos.2 and 3 in the suit. Their father who was about 89 years old was looking after the litigation and as he informed them about the same belatedly the delay was caused. It was submitted that since vital rights of the appellants are involved and they have a good case on merits the delay was liable to be condoned. Reliance was placed on the decision in ***Union of India vs. Giani (2011) 11 SCC 480.***

4. The learned counsel for the respondent No.1 supported the impugned order. It is submitted that the appellate Court rightly found that it was not expected that their father who was aged about 89 years was looking after the litigation. The appellants were parties to the litigation. No evidence was led in support of the application for condonation of delay and therefore the appellate Court rightly rejected that application.

5. I have heard the learned counsel for the parties and having perused the impugned order it is found that the appellate Court was justified in refusing to condone the delay of a period of one year and four months. The only reason given and which has not been accepted is that the father of the appellants who was aged about 89 years was looking after the litigation. It has rightly been found by the appellate Court that in normal course this was not possible. It was however open for the appellants to have led evidence so as to substantiate the period of delay but they did not do so. The certified copy was also received within the period of limitation. Though it was urged that the appellants had good case on merits and hence the delay was liable to be condoned, same cannot be done in absence of any reasonable explanation.

The substantial question of law is answered by holding that appellate Court did not commit any error in refusing to condone the delay.

Second Appeal is dismissed. No costs.

JUDGE