

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9692 OF 2017

(Sanjay Kumar s/o Shantilal Lodha Vs. M/s Terkheda Chemicals
Pvt.Ltd., through Its Director and others)

WITH WRIT PETITION NO.9701 OF 2017

WITH WRIT PETITION NO.9702 OF 2017

Mr.J.M.Murkute, learned Advocate for the petitioner.
Mr.V.S.Undre, learned Advocate for respondent No.1.
Mr.M.B.Kolpe, learned Advocate for respondent No.2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 05/02/2019

PER COURT :

1. The petitioners, who are identically placed in all these matters, are aggrieved by the identical orders passed by the Trial Court dated 03/05/2017 in the respective civil Misc. Applications by which the Trial Court has refused to condone the delay caused in presenting the plaint before the proper Court.

2. I have heard the strenuous submissions of the learned Advocates for the respective sides.

3. The petitioner places reliance upon the judgment delivered by the Hon'ble Apex Court in the matter of Ram Ujarey Vs. Union of India [AIR 1999 SC 309]. The respondents place reliance upon the

judgment of the Allahabad High Court in the matter of Rikhab Dass Vs. Smt.Chandro and other [AIR 1971 Allahabad 234].

4. The undisputed factors in these cases are that the original plaintiff, who had preferred Spl.Civil Suit Nos.1197/1996, 1198/1996 and 1196/1996, passed away on 24/10/2008. After his demise, the power of attorney was executed on 20/11/2008 and the matter was further conducted. On 24/09/2009, the concerned Court passed identical orders directing the plaints to be returned since they were lodged before a wrong Forum. Naturally, Section 14 of the Limitation Act, 1963 would be applicable since the plaintiff had pursued a wrong Forum. On 27/08/2014, a fresh plaint was presented by the power of attorney holder on behalf of the LR's of the deceased plaintiff. Delay caused in presentation of the plaint is about 4 years 11 months and 3 days.

5. The issue raised in these identical petitions is as to whether the limitation would commence from the date on which the power of attorney obtained the certified true copies of the plaint.

6. Learned Advocate for the petitioners submits that the petitioner had no knowledge about the returning of the plaint. After she

(Power of Attorney Holder) got the knowledge of the plaint having been returned, that she applied for obtaining the certified true copy and thereafter presented the plaint before the appropriate Court. The limitation would therefore commence from the date she received the certified copies on 06/03/2014 as she got the knowledge of the returning of the plaint on 03/03/2014.

7. In the judgment delivered in Ram Ujarey (supra), the Hon'ble Apex Court has concluded that the limitation would commence from the date the plaint was returned to the plaintiff. It has been specifically noted in paragraph No.22 that if the appellant was not at fault, the limitation would not run from the date of the order, but would run from the date on which the plaint was returned and made available to the appellant. The delay caused was of 3½ months. The Hon'ble Apex Court noted that the appellant was a *khalashi* and he did not get the knowledge of the return of the plaint.

8. In the instant case, I find an element of misrepresentation on the part of the petitioner when she submits that she had no knowledge about the return of the plaint and she got the knowledge only on 03/03/2014 that the plaint was returned on 24/09/2009. The original plaintiff died on 24/10/2008. The power of attorney

holder, who is a married daughter of the deceased, received the power of attorney on behalf of the LR's on 20/11/2008 i.e. in less than 30 days of the demise of the original plaintiff. The matter was contested and the Trial Court passed an order on 24/09/2009 returning the plaint so as to enable the plaintiff to present the plaint before the appropriate Court. The Trial Court had recorded the presence of the power of attorney at the relevant time and after noting the submissions of the advocate, had passed an order that the plaint be returned for being presented before the appropriate Court.

It is obvious that the plaintiff through power of attorney holder was aware of the said order as there are no circumstances which would indicate that the advocate for the plaintiff was not present or that the parties were absent in the said proceedings. As such, the theory put forth by the plaintiff / petitioner that she had no knowledge, is unsustainable.

9. In the matter of Rikhab Dass (supra), the Allahabad High Court has rightly concluded that Section 14 would become applicable only to the extent of excluding the time spent by the litigant in a wrong Court. There is no Law which permits condonation of delay under the Limitation Act if the suit is not filed, presented before the correct Forum. Hence, the delay of 4 years and 11 months in not presenting

the plaint before the appropriate Court, cannot be excluded by applying Section 14 of the Act.

10. In view of the above, these petitions, being devoid of merit, are dismissed.

11. In view of the above, the amount of Rs.8,000/- in the first petition and Rs.4,000/- each in the other two petitions, would stand refunded to the petitioners and they are at liberty to withdraw the said amounts alongwith accrued interest.

(Ravindra V.Ghuge, J.)