

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 867 OF 2014

SYED MOIN SYED ISMAIL

VERSUS

SYED MAULA SYED ISMAIL AND OTHERS

Advocate for Petitioner : Mr. Milind M. Patil (Beedkar).
Advocate for Respondent No. 5-1 : Mr. P.G. Gunale.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 25.02.2019

PER COURT :

1. The petitioner/original plaintiff is aggrieved by the order dated 04.12.2008, passed by the trial Court, by which, his Miscellaneous Application No. 08/2006, seeking restoration of RCS No. 253/2002, (Old No. 130 of 2000) has been rejected. The petitioner is also aggrieved by the judgment of the appellate Court dated 10.07.2013, by which his Miscellaneous Civil Appeal No. 05/2009, has been dismissed.

2. I have heard the learned advocates for the respective sides at length. Except respondent No. 5-1, all other respondents have not caused an appearance in this Court despite service of Court notice.

Learned counsel for respondent No. 5-1 prays for the dismissal of this petition with heavy costs.

3. There is no dispute that RCS No. 130/2000 was lodged at Ahmednagar, seeking recovery of possession, grant mesne profit and perpetual injunction. The plaintiff had engaged advocate Mr. Nerlikar, who practiced at the Purna Court and used to travel to the Ahmednagar Court. The suit was subsequently transferred from Ahmednagar Court to the Court at Chakur in District Latur, in March, 2002. The suit was dismissed at Chakur in default on 22.06.2005.

5. The plaintiff had approached the Court with his Miscellaneous Application contending that his lawyer had been appointed as a Judge in the district judiciary, he had no knowledge about the transfer of the proceedings to Chakur and that his right to an immovable property was at stake. The trial Court concluded that the lawyer of the plaintiff had indeed joined judiciary. It, however, found fault with the plaintiff since the record reveals that the plaintiff had appeared before the Court at Chakur and had engaged an advocate. He had also sought adjournments. His last adjournment application was allowed subject to costs of Rs. 1,000/- as a last chance and finally, the suit was dismissed on 22.06.2005.

6. The Hon'ble Apex Court has delivered a judgment in the matter of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], wherein it is concluded that a delay of each day is not to be explained. Merits of the matter when pitted against technicalities, are to be considered and the Court is expected to take a pragmatic view rather than following a pedantic approach. In Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [(2013) 12 SCC 649], the Hon'ble Apex Court concluded that if the litigant gains any undue advantage or laches or oblique motives are attributed to his conduct, an application for condonation of delay need not be entertained.

7. In the instant case, it is apparent that the plaintiff performs masonry work at a distant place. He lives in abject poverty, his right to an immovable portion of agricultural land admeasuring 90 Ares based on a 'Hiba' is at stake. Despite the strenuous submissions of the advocate of the respondent, I do not find that the plaintiff would derive any advantage by neglecting his suit. In fact, he would suffer an irreparable harm, serious prejudice and manifest inconvenience, if his suit is not restored. By the impugned orders, all doors of the Court are closed on the plaintiff since he now cannot recover the possession of an immovable property to which he claims a title. Though the merits of the matter can neither be assessed at this stage, nor do I intend to venture

into doing so, the fact remains that the plaintiff could be granted an opportunity to have his claim decided within the framework of law. Costs can be imposed to soften the rigors of litigation being suffered by the defendant who has appeared in this Court.

8. As such, in the facts and circumstances of this case as are recorded above, this petition is partly allowed. The impugned order of the trial Court dated 04.12.2008, is quashed and set aside. MA No. 08/2006 is allowed. Consequentially, the impugned judgment of the appellate Court dated 04.12.2008 and MCA No. 05/2009, would not survive.

9. RCS No. 253/2002, shall stand restored in the Court of the learned Civil Judge, Junior Division at Chakur. The petitioner and respondent No. 5-1 / Sujit Dayanand Reddy, shall appear before the trial Court on 26.03.2019. Fresh notices would be issued by the trial Court to the other defendants. The petitioner shall deposit an amount of Rs. 10,000/- before the trial Court on/or before 25.03.2019, failing which, this order shall stand recalled and the impugned orders shall stand restored. After the amount is deposited, respondent No. 5-1 / Sujit alone shall withdraw the said amounts as costs without conditions. RCS No. 253/2002, shall be decided by the trial Court as expeditiously as possible and in any case, on/or before 31.12.2019. Unnecessary

adjournments sought by the plaintiff or the other litigating sides would stand rejected. In the event of any further order of 'dismissed in default', if passed against the plaintiff, no grievance on his part would be entertained by the Court.

(RAVINDRA V. GHUGE, J.)

S.PC.