

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 9152 OF 2019

Prasad Atmaram Karandikar

.....Petitioner

V/s.

1. Smt. Indirabai Shridhar
Karandikar (Deceased), through
Legal heirs and Ors.

....Respondents

Ms. Varsha Palav i/by. THE LAUREATE, Advocate for the
petitioner.

Mr. Kuldeep U. Nikam, Advocate for the respondents.

CORAM : SANDEEP K. SHINDE, J.

Thursday, 13th June, 2019.

P.C. :

1. The suit for partition instituted by respondent no.1
herein being Special Civil Suit No. 233 of 1995 was decreed on

30th July, 2005 wherein the petitioner was defendant no.5(e). He was represented by Advocate in the said suit. The preliminary decree dated 30th July, 2005 was not challenged either by the petitioner or by the other defendants and therefore a Final Decree Application No.3 of 2007 was decided on 24th March, 2014. Even in these proceedings, the petitioner was represented by his Advocate, V.V. Padiya who did not file any say or his objection thereto. Thereafter, Advocate Rajendra U. Kumbhare, was appointed as Court Commissioner and notices were sent to the petitioner and other opponents informing the date of commission as 5th April, 2012. None appeared on behalf of the petitioner and therefore commission work was adjourned to 28th July, 2012. Notices were re-issued, but the petitioner did not remain present. Commissioner therefore submitted his report to the Court. Even thereafter, the report was not objected to. Aggrieved by the final decree dated 24th March, 2014, Appeal was instituted on 8th March, 2016 and application for condonation

of delay caused in preferring the Appeal was filed on 17th March, 2016 whereby the petitioner sought to condone the delay of 22 months and 10 days.

2. The learned Judge rejected the application having found no sufficient cause was shown, vide order dated 8th February, 2019. It is against this order, this Writ Petition is preferred.

3. Admittedly, the petitioner was represented not only in the suit but in the Final Decree Application proceedings. It is not in dispute that, time and again at every stage, notices were issued to the petitioner and other respondents to enable them to participate in the execution proceedings. Petitioner neither remained present before the Commissioner nor objected to the reports submitted by him to the Court. The subjected suit was instituted by respondent no.1 in the year 1995 and the preliminary decree was passed in July, 2005. It appears from the order that the certified copy was received by the petitioner on 8th July, 2015; however

the petitioner disputes this order and would submit that certified copy was received on 12th February, 2016. Be that as it may, thereafter, the petitioner did not institute the proceedings and has chosen to wait till 8th March, 2016.

4. It is the petitioner's case that, he was represented by Advocate in the execution proceeding; his advocate did not inform him the order passed in the Final Decree Application and therefore he could not take appropriate steps.

5. Petitioner is a practising Chartered Accountant. I have gone through the impugned order. It clearly indicates that, a certified copy was received by the petitioner on 8th July, 2015. Petitioner has not placed on record any documents to show that copy was received on 12th February, 2016. More so, when the petitioner was represented by an Advocate, his submission, that his Advocate did not inform him of the order passed in the final decree, does not constitute sufficient cause to condone the delay.

6. Thus, taking into consideration the facts of the

case, the learned Judge has not committed any jurisdictional error while rejecting the application. In view of this fact and for the reasons stated hereinabove, I am not inclined to interfere with the order impugned in this petition. The petition is therefore dismissed.

(SANDEEP K. SHINDE, J)