

Veena Manohar Rao ... Petitioner
Vs.
Vinita Ganesh Sheth ... Respondent

Mr. Ajit Anekar a/w. Ms Urvi Vaidya, Mr. Thomas James and Mr. Prithvi Aringale i/b. Auris Legal for Petitioner.
Mr. Sudhir Prabhu for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JULY 10, 2019

Heard Mr. Anekar, learned Counsel for the petitioner and Mr.Prabhu, learned Counsel for the respondent at length.

3. Rule. Mr. Prabhu waives service for the respondent. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Anekar submitted that the learned trial Judge passed ex-parte decree on 31.10.2013. The petitioner acquired knowledge of passing of the ex-parte decree on 06.04.2014

when she received the notice of execution. Immediately on the next date i.e. 07.04.2014, she filed application for certified copy and presented the appeal on 16.04.2014. In the process, there is a delay of 187 days in filing the substantive appeal against the decree. He submitted that having regard to the shortness of the delay, the learned District Judge should have condoned the delay. In support of this submission, he relied upon the decision in ***State of Nagaland Vs. Lipok A.O.*, AIR 2005 SC 2191**. He further submitted that the petitioner is a widow and if delay is not condoned, the substantive appeal will be dismissed on technical ground and not on merits.

5. On the other hand, Mr. Prabhu strenuously opposed the Petition. He has taken me through the cross-examination of the petitioner. In cross-examination, petitioner admitted that she had engaged Advocate Yogesh Gangan, who is resident of Khopkar Apartment at Uran. She is residing in Upadhye Wadi, which is adjacent to the Khopkar Apartment. She admitted that as she was residing adjacent to the office of her Advocate, she could visit the office any time. She attended the court proceedings on two occasions. She deposed that she has no documentary evidence to establish that her Advocate informed her to remain present as and when required and for the time being, her presence is not required. She further admitted that she used to make enquiries of the next date of hearing of the Suit. Relying upon the admissions given in the cross-examination, Mr. Prabhu submitted that defendant was fully aware of the proceedings pending in the Suit and despite that, she did not prefer appeal within time. He further submitted that what is material is not the length of delay but whether any sufficient cause is made out for condoning the delay. In the facts and circumstances of the present case, no sufficient cause is made out and hence no case is made out interfering with the impugned order.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, there is delay of 187 days caused in filing the substantive appeal. In the case of **State of Nagaland** (*supra*), it is held by the Apex Court that what counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The expression “sufficient cause” should be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.

7. Thus, what is important is that the shortness of delay is also a factor. If the delay is not condoned, consequences will be drastic, namely, that the substantive appeal preferred by the petitioner against the eviction decree will stand dismissed on the technical ground rather on merits. The respondent will be in a position to execute the decree thereby evicting the petitioner from the suit premises. In my opinion, the learned District Judge should have adopted liberal approach while considering the delay in filing the appeal that too when there is delay of 187 days. At the same time, the learned District Judge should have imposed the cost while condoning the delay so as to compensate the respondent. Hence, the following order:

- a. Impugned order dated 13.12.2018 is set aside subject to petitioner depositing costs of Rs.5,000/- in the District Court within 15 days from today under intimation in writing to the Advocate for the respondent in the District Court;
- b. If such amount is deposited, the respondent is permitted to withdraw the same unconditionally;
- c. If the amount is not deposited in the District Court within the stipulated time, the impugned order shall stand revived without further reference to the Court;

- d. Rule is made absolute accordingly;
- e. All parties, including the District Court, to act upon the authenticated copy of this order.

8. Mr. Anekar submits that in pursuance of the order passed by this Court on 18.03.2019, petitioner has deposited arrears of rent in this Court. In view thereof, the respondent is permitted to withdraw the amount deposited by the petitioner in this Court, unconditionally.

9. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab