

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 506 OF 2018
WITH
CIVIL APPLICATION NO. 1151 OF 2018

M/s.Satkar Developers
A proprietary concern of
Mr.Sunil Philip Lopes,
Age: 47 years, Occ: Business,
R/at : Lucky Corner, Near Awari Hospital,
Chandan Nagar, Pune – 14.
And
Agashi, Visrodi, Tal. Vasai, Thane. .. Applicant/ Appellant

Vs.

Dr.Tejus Kanubhai Maun,
Age : 54 years, Occ: Medical Practitioner,
R/at : A/403, Shree Padmavati,
3rd Cross Lane, Swami Samarthanagar,
Andheri (W), Mumbai – 58. .. Respondent

Mr.Jaydeep Deo, for the Appellant.
Mr.S.S.Patwardhan, for the Respondent No.1.

CORAM : M.S.KARNIK, J.

DATE : 02nd AUGUST, 2019

ORAL JUDGMENT :

. Heard learned Counsel for the appellant. Admit.

The Appeal is admitted on the following question of law.

“Whether the Appellate Court was right in rejecting the application for condonation of delay in filing the Appeal by placing incorrect reliance on the medical certificate dated 05/07/2014 in as much as the Appellate Court proceeded on the footing that Doctor concerned is B.A.M.S. when the certificate indicates otherwise. ”

2. The Appeal is taken up for hearing forthwith by consent of the parties. Learned Counsel for the appellant seeks leave to delete respondents No. 2 to 13 who are informal parties. Leave granted. Amendment to be carried out within 1 week.

3. The appellant is the original defendant No.4 in the Suit filed by the present respondent No.1 - plaintiff for declaration, permanent injunction, partition and separate possession. The Suit came to be decreed by the trial Court on 31/12/2012 declaring that the plaintiff has undivided share in the suit property, entire land and entire existing construction standing thereon and further declarations also came to be

issued.

4. The appellant challenged the said judgment and decree by filing an Appeal before the First Appellate Court. An application came to be filed by the appellant for condonation of delay of 3 years and 45 days in preferring the Appeal. The main ground in the application for condonation of delay is of ailment of proprietor of the appellant who is allegedly suffered a severe paralytic attack warranting regular medical treatment. The appellant relied upon his own affidavit and during the course of hearing, he relied upon medical certificate dated 05/07/2014 issued by the the Consultant Neurologist. According to learned Counsel for the appellant because of this medical condition, the appellant was facing right cerebral hypertensive blood causing left arm and leg paralysis Due to paralysis suffered in February 2012, he could not take appropriate steps to file Appeal within time.

5. Learned Counsel for the respondents opposed the

Appeal. Learned Counsel for the respondents would invite my attention to the findings recorded by the trial Court. He would submit that explanation given by the appellant is not bonafide. He would invite my attention to paragraph 7 of the order where the trial Court has recorded that in June 2014 the appellant appeared in MCA 332/2014 preferred by one of the respondent to the Appeal filed before First Appellate Court. Even present application is filed almost after 28 months and this was also one of the reason why the trial Court doubted the bonafides of the appellant.

6. I have heard learned Counsel. I have gone through the order passed by the First Appellate Court rejecting the application for condonation of delay. I have also perused the certificate dated 05/07/2014. From the certificate it is seen that the same has been issued by Dr.Vinay S.Chauhan who is M.D., D.N.B.(Medicine) and Consultant Neurologist having degree of D.M., D.N.B.(Neurology), D.C.N. (London). He has been associated with the Lalavati Hospital and Research Centre

in Mumbai. In the certificate it is stated that the sole proprietor of the appellant was under the treatment for “right cerebral hypertensive blood causing left arm and leg paralysis.”

7. No doubt, there is delay of 3 years and 45 days in filing the Appeal against the judgment and decree of trial Court. The judgment and decree of the trial Court is dated 31/12/2012. The certificate issued by Dr.Vinay Chauhan certifies that sole proprietor of the appellant suffers from right cerebral hypertensive blood causing left arm and leg paralysis since from February 2012. The qualifications as can be seen from the said certificate would go to show that concerned Doctor is Consultant Neurologist and is not B.A.M.S as observed by the trial Court. It may be that the Vakalatnama signed by the appellant was filed in MCA 332/2014 preferred by one of the respondent before First Appellate Court. That by itself is no ground to assume that the conduct of the appellant is not bonafide. This delay could be adequately compensated by imposing costs on the appellant to be paid to the respondent –

original plaintiff. In my opinion, having regard to the ailment suffered by the sole proprietor of the appellant, this is not a fit case to deprive the appellant's right to contest the Appeal on merits, more so when the original plaintiff can be made to pay exemplary costs.

8. In this view of the matter, the Appeal deserves to succeed. The impugned order passed by the Appellate Court is set aside subject to payment of costs of Rs.50,000/- by the appellant to the original plaintiff. The delay caused in filing the Appeal before the First Appellate Court is condoned.

9. The said costs be paid within 6 weeks from today. Upon payment of costs, the Appeal be heard on merits. Appeal is allowed with no order as to costs. In view of disposal of the Appeal, Civil Application does not survive and the same shall stand disposed of.

(M.S.KARNIK, J.)