

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO.108 OF 2018
IN
WRIT PETITION NO.2070 OF 2018

Dr. Naeem Hasan Karnalkar ... Petitioner
Vs.
Vinod Purushottam Jawajiwar (expired)
through legal heirs and others ... Respondents

Mr. K. H. Karnalkar i/b. Mr. Venkatesh A. Shastry for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JUNE 26, 2019

P.C. :

Heard Mr. Karnalkar, learned Counsel for the petitioner at length.

2. By this Petition under Section 114 read with Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), petitioner has sought review of the order dated 19.04.2018 passed by this Court in Writ Petition No.2070 of 2018. By that order, the Writ Petition instituted by the petitioner was dismissed.

3. The Petition was instituted challenging the judgment and order dated 29.11.2017 passed by the learned Ad-hoc District Judge-1, Pune in Miscellaneous Civil Appeal No.949 of 2015. By that order, the learned District Judge rejected the application filed by the petitioner / defendant for condoning the delay of more than 17 months.

4. While dismissing the Petition, it was observed in paragraph 6 that defendant had filed application under Order IX, Rule 13 of C.P.C. for setting aside ex-parte decree. That application was dismissed by the Courts below. Pending that proceedings, defendant filed substantive

appeal under Section 96 read with Order XLI, Rule 1 of C.P.C. As there was delay of more than 17 months in filing the appeal, he took out application for condonation of delay on the ground that the time spent by the defendant in prosecuting proceedings under Order IX, Rule 13 is bonafide and the same may be excluded while considering the issue of limitation. Relying upon the decision of this Court in ***Amratlal Dhirajlal & Co. Vs. Kamelsingh Harnamsingh Chowhan, Writ Petition No.8502 of 2016*** decided on **08.08.2016** where this Court held that the proceedings under Order IX, Rule 13 and appeal under Section 96 are not consecutive and are simultaneous, the time spent by the defendant in prosecuting proceedings under Order IX, Rule 13 cannot be excluded while computing the delay in filing the substantive appeal under Section 96. The said decision was challenged before the Apex Court in S.L.P. and the Apex Court dismissed the S.L.P. on 07.10.2016

5. Mr. Karnalkar relied upon the decision in ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy, (2013) 12 SCC 649*** to contend that while considering the application for condonation of delay, the Court must adopt a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with the application for condonation of delay. He also submitted that the petitioner will not have any remedy if this Review Petition is not entertained.

6. In so far as the reliance placed on the decision in ***Esha Bhattacharjee (supra)*** is concerned, there is no dispute with the proposition that while considering the application for condonation of delay, the Court must adopt a liberal, pragmatic, justice-oriented and non-pedantic approach. It is, however, not applicable to the facts of the present case as I have already held that the time spent by the defendant in prosecuting application under Order IX, Rule 13 of C.P.C. cannot be excluded while computing the delay in filing the substantive appeal.

Hence, no case is made out for reviewing the order dated 19.04.2018.

7. In the case of ***Kamlesh Verma Vs. Mayawati***, AIR 2013 SC 3301, the Apex Court has considered the scope of review and has observed thus,

“The jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of C.P.C. ”

8. Applying the tests laid down by the Apex Court to the facts of the present case, no ground is made out for review of the order dated 19.04.2018. Review Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab