

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8178 OF 2018

Arun Hari Gadre

... Petitioner

Vs

Ravindra Hari Gadre and Anr.

... Respondents

...

Mr. Jaydeep Deo for the Petitioner.

Mr. Ashutosh M. Kulkarni for the Respondent No.1.

CORAM : SANDEEP K. SHINDE J.

DATE : AUGUST 5, 2019

P.C. :

Heard learned counsel for the parties.

2 Amongst other principles curved out by the Apex Court in the case of ***B. Madhuri Goud v. B. Damodar Reddy (2012) 12 SCC 693*** while dealing with the application for condonation of delay following three principles has bearing over the issue in this Petition:

“(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public

mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(iii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.”

3 In this case, plaintiffs' application for condonation of delay and for restoration of civil suit was allowed by the Trial Judge subject to cost of Rs.7,000/-. It is against this order, aggrieved defendant in the Special Cause Suit No.1629 of 2008 has preferred this petition under Article 227 of the Constitution of India.

4 Respondents' suit was dismissed on 11th June, 2015. He had applied for its restoration and also prayed for condonation of 90 days' delay occurred for the same. It is averred in the application that respondents' advocate sought transfer of other suit being Special Civil Suit No.1571 of 2011 pending in the very Court and between the same parties and to be heard with the subject suit. This application was

rejected on 11th June, 2015. The Trial Court dismissed the suit as it was pending in the Court since 2003. It was dismissed on 11th June, 2015. In paragraph 5 of the application, respondent says that he learnt about the dismissal of the suit for the first time on 18th August, 2015, and thus applied on 11th June 2015 for a certified copy of the order. He further states in paragraphs 8 and 9 that after consulting a lawyer, application for restoration was filed on 3rd November, 2015. In support of the application, evidence affidavit was filed. Respondent/Plaintiff was cross-examined at length.

5 I have gone through the application, evidence affidavit and cross-examination of the respondent/plaintiff. In my view, the respondent/plaintiff had shown '*sufficient cause*' for condoning the delay. That even otherwise delay cannot be said to be inordinate delay and thus liberal approach is called for.

6 Thus, taking into consideration facts of the case and the principles carved out by the Apex Court in the case of **B.Madhuri Goud (Supra)**, I do not see any reason to interfere with the impugned order dated 9th April, 2019 passed in Special Civil Suit No.1629 of 2008.

7 Thus upon consideration of the fact, petition is dismissed. However, respondent/plaintiff is directed to pay Rs.25,000/- additional cost to the petitioner within three weeks from the date of uploading this order on the website. Petition is disposed of as dismissed in the aforesaid terms. All to act on authenticated copy.

(SANDEEP K. SHINDE, J.)