

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2520/2019

Babanrao Ganpatrao Ghadge & Ors. ... Petitioners

V/s.

Gautam Manikrao Ghadge & Ors. ... Respondents

Mr. Dhananjayrao D. Rananaware for the Petitioners

CORAM: K.K. TATED, J.

DATED : MARCH 7, 2019

P.C. :

1 Heard. By this petition under Article 227 of the Constitution of India, the Petitioner original Defendant Nos.4, 15 to 21 challenges the order dated 28.09.2018 passed by the Jt. Civil Judge, Junior Division, Baramati, Dist. Pune below Exhibit-61, 73, 77 in Regular Civil Suit No. 482/2012 allowing the Application made by the Respondent - original Plaintiff for condonation of delay, setting aside the abatement, and for bringing the legal heirs on record of deceased Respondent Nos.10 and 11.

2 The learned counsel for the Petitioner submits that the Trial Court has erred in coming to the conclusion that the Respondent - Plaintiff had shown sufficient cause for condonation of delay in filing the Application for bringing the legal heirs of deceased Respondent Nos.10 and 11 on record. He submits that

the Defendant No.11 died on 22.09.2012. Thereafter the Respondent filed Exhibit-61 under order 22 Rule 4(5) of Code of Civil Procedure, 1908 on 20.09.2013, Exhibit- -63 for condonation of delay in filing the Application for bringing the legal heirs on 20.09.2013 and Exhibit- 77 for bringing the legal heirs on record on 11.06.2014. The learned counsel for the Petitioner submits that, the Respondent - Plaintiff failed to make out any case for condonation of delay. He submits that as soon as Defendant No.11 expired on 22.09.2012, the Defendant No.5 and 14 have made Application below Exhibit- 59 on 02.09.2013 to pass necessary order as to abatement of entire suit. That Application below Exhibit- 59 was heard by the Civil Judge, Junior Division, Baramati and passed the order dated 15.10.2013 recording that the suit stood abated as a whole. To that effect he relies on para 6 of the said order, which reads thus:

“6. Undisputedly, the instant suit is for partition of the joint family property. The interest of the parties are joint and indivisible. Deceased Defendant No.11 is the daughter of deceased Ganpatrao. Deceased Defendant No.11 is not represented by any of her heir. Therefore, in her absence or in the absence of her legal heirs the suit cannot be proceeded and the decree cannot be passed. Therefore, in my opinion, the suit abates as a whole.”

3 The learned counsel for the Petitioner submits that if sufficient cause is not shown, there is no question of setting aside the abatement and condoning the delay. In support of this contention, he relies on the judgment in the matter of ***Union of India Vs. Ram Charan (deceased) AIR 1964 SC 215***. He submits that in this authority, the apex court held that bare statement in the Application about the belated knowledge of the

death of the party is not sufficient. It is a duty of the Applicant to make out a case for delay by giving reasons. He submits that in the case in hand, the Respondent - Plaintiff has failed to make out sufficient cause for delay in filing the Application. Hence, the impugned order is liable to be set aside.

4 Heard the learned counsel for the Petitioner at length. It is to be noted that in the present proceedings the Respondent - Plaintiff had filed suit for partition and separate possession of the HUF property. Since Defendant No.11 expired on 22.09.2012, the Plaintiff made an Application for bringing his legal heirs on record in the month of January 2013. In that Application, there was no prayer for setting aside the abatement and delay. Hence, the Plaintiff had made an Application below Exhibit- 61 for setting aside the abatement and Application below Exhibit- 63 for condonation of delay in filing the Application for bringing the legal heirs on record of deceased Defendants.

5 It is to be noted that the Apex Court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123*** held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so

suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

6 Considering these facts, I am of the opinion that the

authority cited by the Petitioner in the matter of Ram Charan (supra) is not applicable in the present proceedings.

7 Considering the explanation given by the Respondent below Exhibit- 61, 63 and 77 and the impugned order dated 20.09.2013 and the law declared by the apex court in the matter of N. Balkrishnan (supra), I am satisfied that the Petitioner has not made out any case to interfere with the impugned order dated 20.09.2018 passed by the Trial Court.

8 Hence, the Writ Petition stands rejected.

9 No order as to costs.

(K. K. TATED, J.)