

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL No. 16 OF 2018

Ravindra s/o Akaram Ingale

..VS..

Nandu s/o Dhanraj Tarole

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. O. Y. Kashid, Advocate for the appellant.
Shri. R. G. Kavimandan, Advocate for respondent.

CORAM : Manish Pitale J

DATED : 19.08.2019

In this appeal, notice was issued for final disposal on 29.01.2018, on the following substantial question of law :-

“Whether the first appellate Court was legally justified in refusing to condone delay in filing appeal under Section 96 of the Code of Civil Procedure, 1908 ?”

2. While issuing notice for final disposal, this Court also directed the parties to maintain *status quo*.

3. In this case, by the impugned judgment and order dated 04.09.2017, the District Court has rejected an application for condonation of delay of 732 days in filing appeal under Section 96 of the Code of Civil Procedure, 1908 by the appellant herein.

4. The respondent had filed a suit for declaration and permanent injunction against the appellant, which was decreed by judgment and order dated 22.08.2014. The appellant was restrained from causing obstruction to the plaintiff on the suit property. The appellant filed the appeal to challenge the aforesaid judgment and order of the trial Court by filing the same on 25.08.2016, along with an application for condonation of delay. As noted above, by the impugned judgment and order dated 04.09.2017, the District Court rejected the application for condonation of delay, finding that the explanation for delay given by the appellant was not acceptable. The said judgment and order is made subject matter challenge in present appeal.

5. The learned counsel appearing for the appellant submitted that the appellant had given an explanation for delay of 732 days in filing the appeal before the District Court, by stating that the appellant was required to go to Gujrat, for his livelihood and that it is only upon returning after about 1½ years from Gujrat, that the appellant became aware of the judgment and decree passed against him. It was further pointed out that even the respondent (decree holder) chose to file execution petition before the executing Court not immediately after the decree was passed in his favour and that therefore, when the appellant received notice from the executing Court that steps were taken to challenge the judgment and decree passed by the trial

Court. It was submitted that the appellant had a strong case on merits, as the decree of injunction passed by the trial Court was not sustainable.

6. On the other hand, the learned counsel appearing for the respondent submitted that the appellant could not claim any benefit on the basis of alleged delayed filing of execution petition by the respondent (decree holder). It was submitted that the appellant had only made a bald statement about having left for Gujrat for his livelihood as a ground for condoning the delay, but no material was placed on record to support such an assertion. It was also submitted that the documents from the postal department indicated that the appellant had refused to accept the notice sent on behalf of respondent through his Advocate and further that the record of the executing Court clearly demonstrated that the appellant had been duly served with notice issued by the executing Court in April 2016 itself, and yet the appellant chose to file appeal before the District Court after about four months in August 2016, when in the meanwhile, he had even sought time before the executing Court through counsel in June 2016. On this basis, it was submitted that no interference was required in the judgment and order passed by the District Court.

7. Heard learned counsel for the rival parties and perused the material on record. In the present case, the appeal filed by the appellant before the District Court

suffered from a delay of 732 days. The delay being substantial, it was expected on the part of the appellant to cogently explain such a huge delay in approaching the District Court by way of appeal. This is all the more significant because it is an admitted fact that the appellant was duly represented before the trial Court and in a fully contested proceeding, the trial Court passed its judgment and decree on 22.08.2014, granting a decree of injunction against the appellant. It is not as if the appellant was either not represented at the time of hearing before the trial Court, or that the decree passed by the trial Court was an *ex parte* decree. Therefore, the appellant was fully aware about the decree passed against him on 22.08.2014.

8. The only explanation given in the application for condonation of delay filed before the District Court along with appeal, was that the appellant was compelled to go to Surat(Gujrat), for earning his livelihood, where he was required to stay for about 1½ years. Apart from this bald statement made in the application for condonation of delay, no effort was made by the appellant to place on record any material to support such an assertion.

9. Apart from this, the documents placed on record on behalf of the respondent along with reply filed to the application for grant of stay, show that the notice issued by the respondent through his advocate was

refused to be accepted by the appellant. The record of the executing Court shows that on 17.04.2016 the appellant was duly served with notice issued by the executing Court and that time was sought on behalf of the appellant before the executing Court through counsel on 13.06.2016, and yet the appeal with application for condonation of delay was filed before the District Court on 25.08.2016.

10. A perusal of the application for condonation of delay filed before the District Court does not even mention the fact that the appellant was duly served with notice by the executing Court and that time was sought on his behalf through counsel before the executing Court on 13.06.2016. None of these facts and documents are referred to in the application for condonation of delay and it has been merely stated that the appellant “recently got knowledge” of the judgment and decree passed by the trial Court. These facts were suppressed before the District Court.

11. Thereafter, usual statements regarding time taken in receiving certified copies etc., have been made and no serious effort appears to have been made by the appellant in the application for condonation of delay, as well as proceedings before the appellate Court, regarding placing on record cogent material to support reason given in the application for condonation of delay of 732 days before the District Court.

12. Although the Courts are usually lenient and liberal attitude is displayed while considering applications for condonation of delay, but when the delay is substantial, the applicant seeking condonation of delay is expected to place on record proper explanation, duly supported by documentary and other material to demonstrate that the explanation deserves to be accepted. In the present case, other than making bald statement about the necessity of the appellant to go to Surat(Gujrat) for earning his livelihood and staying there for a period of 1½ years, no effort was made on behalf of the appellant to support such reason given for explaining huge delay of 732 days in approaching the District Court to challenge the judgment and decree passed by the trial Court. Therefore, it is found that the appellant has failed to demonstrate any error committed by the District Court in refusing to condone the delay and in rejecting the application for condonation of delay filed on behalf of the appellant.

13. In view of the above, the question of law framed by this Court on 29.01.2018 is answered in the affirmative and it is held that the District Court (First Appellate Court) was legally justified in refusing to condone the delay in the present case.

14. Appeal is dismissed.

JUDGE