

Anand

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

CIVIL REVISION APPLICATION NO. 482 OF 2019

Mohan Ganapati Bhosale

.Applicant

Vs.

Mangal W/o. Ashok Kamble & ors.

.Respondents

Mr. Sachinkumar P. Rajepandhare, Advocate, for the Applicant
Mr. Ramdas Hake Patil, Advocate, for the Respondent No. 1

CORAM : REVATI MOHITE DERE, J.

DATE : 21.01.2020

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. Heard learned counsel for the parties.

2. By this Application, the Applicant has impugned the order dated 01.02.2019 passed by the learned Principal District Judge, Solapur below Exh. 1 in C. M. A. No. 44 of 2018, by which the learned Judge was pleased to condone the delay caused in filing the Appeal against the Ex-parte Judgment and Decree passed in Special Civil Suit No. 77 of 2013 by the learned 3rd Jt. C. J. S. D. , Solapur. The learned Judge vide the said order directed registration of the said Appeal after due scrutiny.

3. Learned counsel for the Applicant submits that no sufficient cause was shown by the Respondent No. 1 for condoning the delay of 1245 days in filing the Appeal in the District Court against the Judgment

and Decree passed in Special Civil Suit No. 77 of 2013 by the learned 3rd Jt. C. J. S. D. , Solapur. Learned counsel for the Applicant relied on the Judgment of the Apex Court in the case of ***Lanka Venkateswarlu (D) by L. Rs Vs. State of A. P. and Ors.***, reported in ***AIR 2011 SUPREME COURT 1199***. He submitted that the concepts such as “liberal approach”, “justice-oriented approach”, “substantial justice” cannot be employed to jettison the substantial law of limitation, particularly, in cases where the Court concludes that there is no justification for the delay. The second Judgment relied upon by the learned counsel for the Applicant is, ***Gurdev Singh & Ors. Vs. Baljit Kaur & Ors.***, reported in ***2011 (2) Law Herald (P & H) 1447***. He submits that in the said case, the Punjab and Haryana High Court did not condone the delay, as there was no sufficient cause or ground for condoning the delay in filing the Appeal was made out.

4. Learned counsel for the Respondent No. 1 opposed the Application. He submitted that no interference is warranted in the impugned order. He further submitted that sufficient cause was shown by the Respondent No. 1 for condoning the delay and that the same is also reflected in the Application filed by the Respondent No. 1 for condoning the delay caused in filing the Appeal before the District Court. He submits that the Applicant had prepared a false and fabricated registered Agreement to Sale dated 20.08.2009. He submits that the said

Agreement was never signed by the Respondent No. 1 and that the Applicant in collusion with the other Respondents prepared a false and fabricated document by putting the signature of another lady before the Sub-Registrar, Taluka – North Solapur, District – Solapur. He further submitted the Applicant also executed a separate Agreement dated 20.08.2009 in the name of Sahadev Londhe with respect to the alleged payment made. According to the learned counsel for the Respondent No. 1, the Applicant had not paid any consideration on the date of execution of the registered Agreement to Sale nor on the date of the so called Sale Deed. He further submitted that the Respondent No. 1 is an illiterate lady, unaware of the provisions of law. He submitted that the Respondent No. 1 first learnt that her name was deleted from the records of rights i. e. Gat No. 143 of Belati, Taluka – North Solapur, District – Solapur, when she learnt about the suit and the decree passed in the said suit. He submits that the Respondent No. 1 has in detail set out the details, showing sufficient cause for condoning the delay of 1245 days in filing the Appeal against the Judgment & Decree passed in Special Civil Suit No. 77 of 2013 by the learned 3rd Jt. C. J. S. D., Solapur. He submits that no interference is warranted in the said order condoning the delay.

5. Learned counsel for the Applicant submits that the Respondent No. 1 has also filed an Application for setting aside the

Ex-parte Judgment and Decree passed by the learned 3rd Jt. C. J. S. D., Solapur in 2015 and that the same is pending.

6. Perused the papers including the impugned order as well as the Judgments cited by the learned counsel for the Applicant. It is not in dispute that the Applicant had filed a suit in the Court of the learned 3rd Jt. C. J. S. D., Solapur for specific performance and perpetual injunction. It appears that notices were issued to the Defendants therein. Except the Respondent No. 1 (Defendant No. 5), all other Defendants appeared in the said suit. It appears that after the evidence was recorded, the suit proceeded ex-parte only as against the Respondent No. 1. The said suit was decreed by the learned 3rd Jt. C. J. S. D., Solapur on 18.09.2014. Pursuant to the said decree, the Applicant – Decree Holder called upon Judgment Debtors i. e. Respondents to execute the Sale Deed. The Applicant also filed Darkhast, being Darkhast No. 14 of 2015. It appears that the Applicant made an Application for paper publication, which was allowed. Pursuant thereto, the Applicant published a notice in the daily news paper. It appears that the Respondents did not appear before the executing Court. It appears that the Respondent No. 1 learnt about the Ex-parte Judgment and Decree on 26.08.2015, pursuant thereto, she obtained a certified copy and contacted her Advocate. It appears that the Respondent No. 1 is an illiterate and due to financial constraints, she could not file the Appeal

immediately after receipt of the certified copy. It is not in dispute that the Respondent No. 1 filed an Application for setting aside the Ex-parte Judgment and Decree alongwith an Application for condonation of delay before the Appellate Authority. According to the Respondent No. 1, the Applicant had prepared a false and fabricated registered Agreement to Sell dated 20.08.2009, which Agreement was never signed by her. According to the Respondent No. 1, the Applicant colluded with the other Respondents and prepared a false and fabricated document by putting the signature of other Defendants on the said Agreement before the Sub-Registrar, North Solapur. According to the Respondent No. 1, the Applicant and the other Respondents played fraud and executed a bogus document without her knowledge. The said Application seeking condonation of delay of 1245 days caused in filing the Appeal against the Judgment and Decree dated 18.09.2014 passed by the learned 3rd Jt. C. J. S. D., Solapur was allowed. The Respondent No. 1 had shown sufficient cause for condoning the said delay in filing the Appeal. Perused the Judgments tendered by the learned counsel for the Applicant. The said Judgments are clearly distinguishable in the facts of the present case. Accordingly, no infirmity can be found in the order dated 01.02.2019 passed by the learned Principal District Judge, Solapur below Exh. 1 in C. M. A. No. 44 of 2018. Accordingly, the Application is dismissed. However, the hearing of the Appeal is expedited.

7. The Application is accordingly disposed of.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)