

nsc.

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

WRIT PETITION NO.1646 OF 2020

Vivek Bhagat (Director)

... Petitioner

Versus

State of Maharashtra and Anr.

...Respondents

Mr. R. R. Pandey, for the Petitioner.

Ms. Geeta P. Sonawane, A.G.P. for Respondent No.1.

Mr. K. R. Maniyar, for Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 6th MARCH, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioner has impugned the order dated 23rd September, 2019, passed by the learned 7th Ad-hoc District Judge, Pune, below Civil Miscellaneous Appeal No.289 of 2018, by which the learned Judge was please to reject the petitioner's application seeking condonation of delay of 442 days caused in filing an Appeal against an ex-parte decree dated 21st November, 2016, passed in Special Civil Suit No.441 of 2015, by which the petitioner was directed to pay an amount of

Rs.13,16,000/- alongwith interest at the rate of 12% per annum.

3. Learned Counsel for the petitioner submits that the Judgment and Decree dated 21st November, 2016, passed by the trial Court in Special Civil Suit No.441 of 2015 was an ex-parte decree. He submits that the petitioner had not been served with the writ of summons, pursuant to which, the petitioner could not remain present. He submits that the writ of summons was never handed over to the petitioner but to somebody in the office and the same was never handed over to the petitioner, as a result of which, the petitioner was precluded from contesting the suit on merits. He submits that the petitioner will be seriously prejudiced, if the delay is not condoned and if the appeal is not heard on merits.

4. Learned Counsel for the Petitioner has tendered an additional affidavit of the petitioner. The same is taken on record. In the said affidavit the petitioner has stated that he has deposited a sum of Rs.3,40,000/- in the execution proceedings and that he is ready to deposit an additional amount of Rs.9,76,000/- before the Executing Court, without prejudice to his rights and contentions in the appeal. Learned Counsel for the petitioner submits that thus the petitioner would be depositing the principal amount of Rs.13,16,000/- in the Executing Court.

5. Learned Counsel for the Petitioner, on instructions of the Petitioner, who is present in Court states that the in the event, the petitioner fails to deposit Rs.9,76,000/- in the Executing Court, within four weeks from today, the trial Court would be at liberty to issue appropriate orders including arrest warrant, as against the petitioner.

6. Learned Counsel for the Respondent No.2 opposes the petition and submits that no interference is warranted in the impugned order. He submits that the petitioner be directed to deposit even the interest which is due and payable as per the Judgment and Decree dated 21st November, 2016 i.e. interest of about Rs.7 lakhs odd (interest on the principal amount of Rs.13,16,000/-). He further submits that the petitioner was duly served with the writ of summons and as such there is no substance in the submission advanced by the learned counsel for the petitioner.

7. Perused the papers. The respondent no.2–plaintiff had filed a Special Civil Suit No.441 of 2015 as against the petitioner, in the Court of learned Extra Joint Civil Judge, Senior Division, Pune, for recovery of an amount of Rs.17,17,820/-. The said suit proceeded ex-parte and was decreed on 21st November, 2016. The trial Judge decreed the suit of the respondent no.2 – plaintiff for Rs.13,16,000/- along with costs i.e. the

petitioner was directed to pay a sum of Rs.13,16,000/- to the respondent no.2 – plaintiff, within two months from the date of decree. On failure, the respondent no.2 – plaintiff was entitled to interest at the rate of 12% p.a. from the date of the suit to its full realization. The petitioner filed an appeal against the said ex-parte Judgment and Decree alongwith an application for condonation of delay of 442 days caused in filing the said Appeal. In the said application, the petitioner has stated that he was not aware of the said decree and hence there was delay in filing an appeal against the ex-parte decree. The said application was rejected by the Appellate Court vide order dated 23rd September, 2019. Pursuant thereto, the Executing Court issued arrest warrant as against the petitioner for recovery of the decretal amount. It is not in dispute that the petitioner has deposited Rs.3,40,000/- in the Executing Court and has today tendered an additional affidavit stating that he will deposit an additional amount of Rs.9,76,000/- in the Executing Court within four weeks from today. Thus, the total amount that will be deposited by the petitioner would be the principal amount mentioned in the decree i.e. Rs.13,16,000/-. Learned Counsel for the petitioner on instructions of the petitioner, who is present in Court, undertakes to deposit the said amount of Rs.9,76,000/- within four weeks from today and states that no further extension will be sought by him.

8. Having perused the application filed by the petitioner seeking condonation of delay, *prima facie* it appears that the petitioner had disclosed sufficient cause for condoning the delay.

9. Since, the petitioner has also agreed to deposit the balance amount to make up the entire principal amount and having regard to what is stated herein-above, in the interest of justice, the impugned order dated 23rd September, 2019, passed by the learned 7th Ad-hoc District Judge, Pune, below Civil Miscellaneous Appeal No.289 of 2018, is quashed and set aside. The delay caused in filing the appeal against the ex-parte decree is condoned, subject to the petitioner depositing Rs.9,76,000/- in the Executing Court, within four weeks from today. Considering the aforesaid, the arrest warrant issued as against the petitioner on 13th February, 2020, is also quashed and set aside.

10. If the aforesaid amount is deposited within four weeks from today, the Appellate Court to register the Appeal filed by the petitioner and proceed with the same, in accordance with law. It is made clear, that if the said amount is not deposited as stated herein-above, it is open for the Executing Court to issue a fresh arrest warrant as against the petitioner, in accordance with law.

11. Needless to state, that the respondent no.2 – plaintiff is at liberty to file an application seeking withdrawal of the said amount, so deposited, by the petitioner. If such an application is filed, the appropriate Court to decide the same, on its own merits, in accordance with law. All contentions of all parties are kept open.

12. Petition is accordingly disposed of on the aforesaid terms.

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

REVATI MOHITE DERE, J.