

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO.346 OF 2019
IN
NOTICE OF MOTION NO.628 OF 2014
IN
SUIT NO.690 OF 2013
WITH
NOTICE OF MOTION (L) NO.504 OF 2019**

Anil V. Ranadive

... Appellant
(Orig. Defendant)

Vs.

Satish Shankarrao Paralkar & Anr.

... Respondents
(Orig. Plaintiffs)

Ms. Vasanti S. Dighe, advocate for the appellant.

Ms. Bina R. Pai a/w Mr. A. R. Pai, advocates for the respondents.

**CORAM : K.K. TATED &
SARANG V. KOTWAL, JJ.**

DATE : 9TH MARCH 2020.

P.C. :

1. By consent of both the parties, present appeal is taken up for final hearing at the stage of admission itself.
2. Heard learned counsel for the parties.
3. By this appeal, the appellant-original defendant is

challenging the order dated 4th April, 2019 passed by the learned Single Judge dismissing the Notice of Motion bearing No.628 of 2014 for recalling the orders dated 15th December, 2008 and 26th June, 2009, by which the appellant-original defendant's right to cross-examine the respondents-original plaintiffs' witnesses was closed.

4. The learned counsel Ms. Vasanti Dighe appearing on behalf of the appellant-original defendant submits that when the matter was on board before the Court, on 15th December, 2008 for examination-in-chief of respondents-original plaintiffs' witness, on that date the appellant-original defendant was out of India. Hence, it remains on his part to contact his advocate and instruct them to remain present before the Court. She further submits that even thereafter the matter appeared before Court on 26th June, 2009. On that date no one remained present on behalf of the appellant-original defendant. Hence, this Court passed an order on 26th June, 2009 stating that the evidence of the defendant is closed and the matter was listed for argument.

5. The learned counsel for the appellant-original defendant submits that meanwhile the respondents-original plaintiffs preferred an application for carrying out amendment in the plaint. She submits that earlier the said application was dismissed by the learned Single Judge. Being aggrieved by the said order, the respondents-original plaintiffs preferred an appeal. She submits that the Appellate Court, by its order dated 12th March, 2013, allowed the appeal and

permitted the respondents-original plaintiffs to carry out amendment in S.C. Suit No.947 of 1983. She submits that thereafter they filed an additional written statement on the basis of amended plaint.

6. The learned counsel for the appellant-original defendant submits that as soon as they learnt that, earlier this Court passed the orders on 15th December, 2008 and 26th June, 2009, closing the appellant-original defendant's right of cross-examination, they preferred a Notice of Motion No.628 of 2014 for recalling both the orders. She submits that on some of the dates, when the matter was appeared before the Court, the name of the parties were shown incorrectly. She submits that these facts were recorded by the Court in the order dated 13th September, 2011 and other subsequent orders.

7. The learned counsel for the appellant-original defendant submits that the matter was transferred to the City Civil Court for hearing and final disposal on merits. She submits that because of the amendment carried out by the respondents-original plaintiffs, the same was retransferred to the High Court on the basis of pecuniary jurisdiction. She submits that, if the matter is retransferred, then it is required to be heard from beginning. In support of her contention, she relied on the judgment of the Hon'ble Apex Court in the case of **Joginder Tuli Vs. S.L. Bhatia & Anr. [(1997) 1 SCC 502]**. She submits that in this case the Hon'ble Apex Court held that, 'normally, when the plaint is directed to be returned for presentation to the proper court, perhaps it has to start from the beginning'. The learned

counsel for the appellant-original defendant, by relying on the judgment of the Hon'ble Apex Court in the case of **Joginder Tuli (supra)**, submits that in the interest of justice this Hon'ble Court be pleased to recall the orders dated 15th December, 2008 and 26th June, 2009 and allow the appellant-original defendant to cross-examine the respondent-original plaintiffs and their witnesses, so that the matter can be decided on its own merits. She submits that if the appeal is not allowed, the irreparable loss/injury will be caused to the appellant-original defendant.

8. On the other hand, the learned counsel Ms. Bina R. Pai appearing on behalf of the respondents-original plaintiffs vehemently opposed the appeal. She submits that the appellant-original defendant failed to disclose any reason to allow this appeal. Hence, there is no merit in the appeal, and same may be dismissed with costs.

9. The learned counsel for the respondents-original plaintiffs submits that the orders were passed by the Court on 15th December, 2008 and 26th June, 2009 closing the appellant-original defendant's right to cross-examine the respondents-original plaintiffs' witnesses. She submits that though the order was passed in the years 2008 and 2009, the appellant-original defendant preferred Notice of Motion No.628 of 2014 on 8th May, 2014 before the learned Single Judge for recalling both the orders and allowing the appellant-original defendant to cross-examine the respondents-original plaintiffs' witnesses. She submits that there was delay of

more than six years in filing the said Notice of Motion. She submits that the appellant-original defendant failed to disclose the cause of delay for more than six years. She submits that inspite of having knowledge about the orders passed by this Court on 15th December, 2008 and 26th June, 2009, the appellant-original defendant failed and neglected to file the Notice of Motion immediately. She submits that the learned Single Judge has rightly rejected the Notice of Motion on merits.

10. The learned counsel for the respondents-plaintiffs submits that the Hon'ble Apex Court in the matter of **Balwant Singh (Dead) Vs. Jagdish Singh & Ors. [(2010) 3 SCC (Civ) 537]** held that, 'if the sufficient cause is not shown by the applicant, then there is no question of allowing the application for condonation of delay'. She submits that in this matter, there was delay of 778 for filing the application for setting aside abatement of suit and allowing the applicant to bring the legal heirs on record of deceased respondent. She submits that the Hon'ble Apex Court dismissed the said application. She submits that in a case in hand, the appellant-original defendant failed to disclose the substitute cause for condonation of inordinate delay of more than six years in filing the Notice of Motion. She submits that all these facts were considered by the learned Single Judge and rightly dismissed the Notice of Motion No.628 of 2014 preferred by the appellant-original defendant. In support of her contention, she relied on paragraphs 25, 26, 27 and 34 of the judgment in the matter of **Balwant Singh (supra)**, which read as under :-

“25. We may state that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of “reasonableness” as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

27. The application filed by the applicants lacks in details. Even the averments made are not correct and ex facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true,

but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflects normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party.

34. *Liberal construction of the expression “sufficient cause” is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. There can be instances where the court should condone the delay; equally there would be cases where the court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect “sufficient cause” as understood in law. (Advanced Law Lexicon, P. Ramanatha Aiyar, 2nd Edn., 1997].”*

11. On the basis of this submission, the learned counsel appearing on behalf of the respondents-original plaintiffs submits that this Hon’ble Court be pleased to dismiss the appeal with costs.

12. It is to be noted that in the present proceeding initially the respondents-original plaintiffs filed suit on 15th May, 1983 for

specific performance and other reliefs. Thereafter, the same was amended in 2013 raising the additional compensation and other reliefs. When the unamended suit was on board for recording evidence of the original plaintiffs on 15th December, 2008, none appeared on behalf of the appellant-original defendant, as he was out of India on that date. Apart from that, even no one appeared from the office of advocate. Same thing is happened on 26th June, 2009. Hence, the Court closed the appellant-original defendant's right to cross-examine the respondents-original plaintiffs' witnesses.

13. It has to be noted that because of mistake on the part of the advocate, the litigant should not suffer. Even in the matter of **State of Haryana Vs. Chandra Mani & Ors. [JT 1996 (3) SC 371]** the Apex Court held that because of mistake on the part of the advocate, a litigant should not suffer. Paragraph 5 of the judgment reads thus:

"5. In Concord of India Insurance co. Ltd. V. Nirmala Devi & Ors (1979) 3 SCR 694 which is a case of negligence of the counsel which misled a litigant into delayed pursuit of his remedy, the default in delay was condoned. In Lala Mata Din Vs. A. Narayanan (1970 2 SCR 90, this Court had held that there is no general proposition that mistake of counsel by itself is always sufficient cause for condonation of delay. it is always a question whether the mistake was bona fide or was merely a devise to cover an ulterior purpose. In that case it was held that the mistake committed by the counsel was bona fide and it was not tainted by any mala fide motive."

14. In the present proceeding, the respondents-original plaintiffs filed an application for amendment of the plaint, which was

rejected. Thereafter, the respondents-original plaintiffs preferred an appeal and that was allowed on 12th March, 2013. Subsequently, the appellant-original defendant filed additional written statement and thereafter the appellant-original defendant preferred Notice of Motion No.628 of 2014 for recalling both the orders dated 15th December, 2008 and 26th June, 2009, which was filed on 8th May, 2014. If we calculate the delay on the part of the appellant from the date of allowing the respondents-original plaintiff's appeal to carry out amendment, hardly there is a delay of 7-8 months. Apart from that, we are of the opinion that, because of the mistake on the part of the advocate, litigant should not suffer and, therefore, it is necessary to allow the present appeal. In any case, the suit is pending for hearing since 1983. Considering the age of both the parties, the hearing of the suit is required to be expedited. Hence, the following order :-

ORDER

- (i) The impugned order dated 4th April, 2019, passed by the learned Single Judge in Notice of Motion No.628 of 2014, is set aside.
- (ii) Notice of Motion No.628 of 2014 preferred by the appellant-original defendant is allowed by recalling the orders dated 15th December, 2008 and 26th June, 2009, by which the appellant-original defendant's right to cross-examine was closed.
- (iii) The appellant-original defendant is allowed to cross-examine the respondents-original plaintiffs and their witnesses.

- (iv) The appellant-original defendant to cross-examine respondents-original plaintiffs' witnesses without asking any adjournment.
- (v) The appellant-original defendant to pay costs of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the respondents-original plaintiffs on or before 21st March, 2020 and place on record the receipt to that effect, failing which the appeal stands dismissed without further reference to this Court.
- (vi) The hearing of S.C. Suit No.947 of 1983 is expedited.
- (vii) The appeal stands disposed of accordingly.
- (viii) No order as to costs.

(SARANG V. KOTWAL, J.)

(K.K. TATED, J.)