

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

Second Appeal No. 82 of 2020

Dilip Rambhau Wadal Vs. Bharti Pravin Parse

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

Court's or Judge's orders

Mr. S.A. Mohta, Advocate for the appellant
Mr. R.P. Joshi, Advocate for the respondent

CORAM : MANISH PITALE, J.

DATED : NOVEMBER 06, 2020

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. In this Second Appeal, on 26/02/2020, this Court had framed substantial question of law and issued notice. The said substantial question of law reads as follows :

“Whether, the learned Lower Appellant Court was right in rejecting the application for condonation of delay though sufficient evidence by way of Medical Certificate was available on record and to prove the said fact the Doctor was examined?”

3. The appellant herein is aggrieved by order dated 19/12/2019, passed by the Court of Adhoc District Judge-1, Akola (Appellate Court), whereby application for condonation of delay filed on behalf of the appellant was rejected. As a consequence,

the First Appeal filed by the appellant before the Appellate Court was not taken up on merits and the judgment and decree dated 31/03/2018, passed by the Trial Court in favour of the respondent stood confirmed.

4. The respondent herein had filed the suit for declaration, possession, permanent injunction and setting aside / cancellation of sale deed. After considering the pleadings and material on record, the Trial Court decreed the suit in favour of the respondent, thereby declaring her as lawful owner of the suit field and further cancelled sale deed dated 13/04/2011. It was directed that the appellant (original defendant) would hand over peaceful and vacant possession of the suit field to the respondent herein. The said judgment and decree dated 31/03/2018, passed by the Trial Court was challenged by the appellant by filing First Appeal before the Appellate Court. It is an admitted position that the appeal suffered from delay of 235 days and, therefore, the appellant had filed an application for condonation of delay bearing Miscellaneous Judicial Case No. 28 of 2019, before the Appellate Court.

5. In the application for condonation of delay, the appellant stated that he had been suffering from serious health ailments, including liver psoriasis i.e. Nephritis with nephritis anemia with splenitis. It was stated in the said application that due to the aforesaid health ailments, the appellant was advised to take complete bed rest from 01/02/2018 to 31/12/2018. According to the appellant, as stated in the said application, he contacted his counsel in the Trial Court on 21/12/2018 and upon becoming aware about the judgment and decree passed by the Trial Court, he immediately applied for certified copy, which was

received on 04/02/2019 and thereafter, the appeal with application for condonation of delay were filed.

6. The respondent opposed the application for condonation of delay and the parties placed on record evidence and material in support of their respective stands. After considering the pleadings, evidence and material on record, the Appellate Court passed the impugned judgment and order rejecting the application for condonation of delay filed on behalf of the appellant.

7. In this backdrop and in the context of the above quoted substantial question of law framed by this Court, Mr. S.A. Mohta, learned counsel appearing for the appellant submitted that the Appellate Court had adopted hyper-technical approach in the matter, as a result of which the impugned order suffered from errors. It was submitted that the Appellate Court came to an erroneous conclusion that sufficient cause for condonation of delay was not made out by the appellant, despite the fact that detailed material, including medical documents, were placed on record to support the fact that the appellant was suffering from serious health ailments at the relevant time due to which he could not take immediate steps for challenging the judgment and decree passed by the Trial Court. It was submitted that the sonography and other scans conducted on the appellant due to his health ailments from the end of the year 2017 through the year 2018, clearly indicated that there was sufficient material to support the reasons putforth on behalf of the appellant while seeking condonation of delay. It was submitted that when reasonable material was on record to support the stand of the appellant and the endeavour of the Court ought to be to decide *lis* between the

parties on merits rather than on technicalities, the Appellate Court ought to have allowed the application for condonation of delay. On this basis, it was submitted that the substantial question of law deserved to be answered in favour of the appellant and the impugned judgment and order deserved to be set aside.

8. On the other hand, Mr. R.P. Joshi, learned counsel appearing for the respondent vehemently opposed the contentions raised on behalf of the appellant. It was submitted that the appellant had not only failed in demonstrating sufficient cause for condonation of delay before the Appellate Court, but, the material on record clearly demonstrated that false statements were made on behalf of the appellant while seeking condonation of delay. It was submitted that once it was found that false statements were made while seeking condonation of delay, as per the settled position of law, the Court was justified in refusing to condone the delay. The learned counsel appearing for the respondent specifically invited attention of this Court to certain applications made by the counsel representing the appellant before the Trial Court, particularly Exh.40, which falsified the assertions made on behalf of the appellant. In order to support the contentions raised on behalf of the respondent, specific reliance was placed on the judgments of the Hon'ble Supreme Court in the cases of **Mohd. Sahid and Ors. Vs. Raziya Khanam (D) Thr. Lrs and Anr. AIR 2018 SC 4724**, **Pundlik Jalam Patil (Dead) By LRs Vs. Executive Engineer, Jalgaon Medium Project and Another (2008) 17 SCC 448** and judgment of this Court in the case of **Vasant Vithal Gawand Vs. Shantaram Tukaram Gawand since (D) by his LRs & Anr. 2016(2) ALL MR 235** and other judgments. It was submitted that the thrust of the aforesaid judgments was that the applicant seeking condonation of delay, if found indulging in falsities does

not deserve any indulgence and application for condonation of delay deserves to be dismissed on that ground itself.

9. Heard learned counsel for rival parties and perused the material on record.

10. In order to appreciate the contentions of the rival parties, it would be appropriate to peruse the application for condonation of delay. It is stated on behalf of the appellant in the said application that the reason why the appellant was not aware about the judgment and decree of the Trial Court dated 31/03/2018, was that he was suffering from serious health ailments due to which he was advised to take complete bed rest from 01/02/2018 to 31/12/2018. It was stated in the said application that after the appellant recovered from the serious health ailments that he could contact his counsel before the Trial Court on 21/12/2018 and it was only thereafter that steps could be taken for approaching the Appellate Court to challenge the judgment and decree of the Trial Court. Therefore, the reason put forth on behalf of the appellant is complete inability to contact his counsel or to become aware about the stage of proceedings before the Trial Court and the fact that the judgment and decree dated 31/03/2018, had been passed against him. As noted above, the respondent opposed the said application on the ground that the reasons put forth were not borne out by the material on record.

11. The parties led evidence in the matter and the Appellate Court has referred to the documents and material on record. A perusal of the impugned judgment and order of the Appellate Court shows that the contentions of the rival parties have been recorded in detail and the specific stand taken by the

appellant has been analyzed on the basis of the material available on record. The Appellate Court has found that while on the one hand, an emphatic statement was made on behalf of the appellant that he was advised complete bed rest between 01/02/2018 to 31/12/2018 and further that he was required to undergo treatment for serious health ailments throughout this period, due to which he could not contact his counsel or become aware about the proceedings before the Trial Court, on the other hand, there was material to establish that the appellant had indeed remained in contact of his counsel before the Trial Court. It was found that certain applications were filed on behalf of the appellant before the Trial Court, indicating that the appellant was not only in touch with his counsel, but, that the appellant was travelling and the claim of being seriously ill necessitating bed rest was not borne out by the material on record.

12. The Appellate Court has referred to the application dated 12/02/2018 (Exh.40), wherein the counsel representing the appellant specifically stated that adjournment was necessary before the Trial Court, in the suit proceedings, as the appellant had travelled to Mumbai and further that the appellant had also asked the counsel to return the papers pertaining to the aforesaid litigation. The Appellate Court has also referred to an application dated 21/12/2017, wherein the counsel representing the appellant had stated that the appellant had gone to Nagpur for medical checkup, as a result of which important information could not be received from him. The Appellate Court has further referred to the fact that the stand regarding advise of complete bed rest was taken on behalf of the appellant on the basis of certificate issued by a Doctor, who was not even examined on behalf of the appellant and he was not the Doctor, who had

actually treated the appellant.

13. After referring to such material on record, the Appellate Court has found that the contentions raised on behalf of the appellant while seeking condonation of delay stood falsified. Thereafter, the Appellate Court also came to a considered conclusion that sufficient cause for condonation of delay was not made out and accordingly, the application for condonation of delay stood rejected. This Court also perused the material on record, particularly, the medical documents, including sonography reports and other such material emphasized upon by the learned counsel for the appellant, to examine as to whether the stand taken by the appellant before the Appellate Court while seeking condonation of delay was borne out by the material on record. This Court finds that there are indeed documents on record, which indicate that the appellant was being treated for certain health ailments. The certificate for bed rest between 01/02/2018 to 31/12/2018, obviously cannot be looked into by the Court for the reason that the Doctor, who issued the said certificate was not the Doctor, who was treating the appellant and in any case, the said Doctor was admittedly not examined before the Appellate Court.

14. The specific stand taken on behalf of the appellant that his health condition was such that he could not have contacted his Advocate between February 2018 to December 2018, is not made out by the material on record at all. In fact, the Appellate Court has referred to admissions given by the appellant in the cross-examination, which indicate that while the appellant was consistently visiting his treating Doctor at Akola, which was at a distance of 1 and 1½ Km from the office of his counsel, he was feigning ignorance regarding the proceedings before the Trial

Court and the fact that the judgment and decree dated 31/03/2018 had been passed against him.

15. It is one thing to come to a conclusion that sufficient cause for condonation of delay is not made out and quite another to find that the stand taken on behalf of the applicant seeking condonation of delay was falsified by the material on record. As noted above, the Appellate Court, on facts, found that the contentions raised on behalf of the appellant and specific stand taken in the application for condonation of delay stood falsified by the material on record. The said findings rendered by the Appellate Court are found to be correct by this Court.

16. Once such a conclusion is reached, the position of law laid down by the afore-mentioned judgments of the Hon'ble Supreme Court and this Court would apply in full force to the facts of the present case. In the case of **Pundlik Jalam Patil (Dead) By LRs Vs. Executive Engineer, Jalgaon Medium Project and Another** (supra), the Hon'ble Supreme Court has clearly held that a party taking false stand to get rid of bar of limitation should not be encouraged to get any premium on its falsehood. It is further held that lethargic litigants ought not to be permitted to leisurely chose their own time for preferring an appeal. In the case of **Vasant Vithal Gawand Vs. Shantaram Tukaram Gawand since (D) by his LRs & Anr.** (supra), this Court in terms held that payment of costs cannot be a panacea for delay when it is not properly explained. The position of law laid down by the Hon'ble Supreme Court in the case of **Mohd. Sahid and Ors. Vs. Raziya Khanam (D) Thr. Lrs and Anr.** (supra), would also apply in the facts of the present case. Therefore, apart from the fact that the application for condonation of delay in the present case does not appear to

make out a sufficient cause for condonation of delay, the material that has come on record shows that the specific stand taken on behalf of the appellant while seeking condonation of delay, is falsified by the material on record. Hence, the appellant did not deserve condonation of delay of 235 days in approaching the Appellate Court. The findings rendered by the Appellate Court in the impugned order cannot be said to be erroneous.

17. In view of the above, the substantial question of law framed by this Court is answered against the appellant and in favour of the respondent. Accordingly, the present appeal is dismissed. No costs.

18. Record and proceedings were received in this Court. Consequent upon dismissal of the present appeal, the record and proceedings be sent back to the concerned Court forthwith.

JUDGE

MP Deshpande