

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6339 OF 2017

Pramod Krushna Shilevant .. Petitioner
Versus
Krushna Raut Shilevant, deceased
thru his LRs and ors .. Respondents

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Mr. Nikhil Wadikar i/b Nandu Pawar for the petitioner.
Mr. J.S. Gaikwad for respondent no.2.

CORAM: BHARATI DANGRE, J.
DATED : 7th DECEMBER 2021

P.C:-

1 The present petition is filed by the petitioner, the original plaintiff whose Suit in form of Regular Civil Suit No.334/1993 filed in the Court of Civil Judge, Jr. Division, Karad, seeking partition and separate possession of his one half share in the properties came to be dismissed in default on 8th February 2004.

Perusal of the impugned order, the learned Judge has recorded as under :-

“The suit is very old and pending unattended since long. Adv. D.Y. Jadhav for plaintiff submitted that the parties are not attending the Court and suit may be

dismissed. As the Suit is very old and neither parties are present, Suit is dismissed under Order 9 Rule 3 of CPC.

2 Upon dismissal of Suit on 18th January 2005, an application for setting aside the said order is filed by seeking condonation of delay of 10 months, wherein three fold reasons are cited; one being that the plaintiff was not keeping well and on account of the difficulties faced by him on domestic front, he was under tremendous mental pressure; secondly, that since the financial position was not good, he had to proceed to Mumbai for earning his source of livelihood and therefore, he could not attend the proceedings; thirdly, the knowledge of dismissal of the Suit being gained by him, when in another Regular Civil Suit No.426/2004 filed by him in the very same Court on 24th December 2004 seeking declaration of ownership and perpetual injunction against the defendants, the defendant no.2 filed his say and mentioned about the earlier Suit being dismissed. On these grounds, the Restoration of dismissed suit is sought.

3 In support of the delay application, the petitioner filed his evidence affidavit and was also cross-examined, where he candidly admit that there are no documents with him for establishing his assertions in the application, being that he was unwell and that he was in Mumbai for earning his livelihood. The learned Judge considered the evidence and the reasons put

forth in the application and reached to a conclusion that the delay is not satisfactorily explained and therefore, do not deserve to be condoned. Necessarily, Civil Miscellaneous Application No.4 of 2005 is rejected.

4 I see no lacunae in the impugned order as the lackadaisical approach of the petitioner who was not diligent in prosecuting his own suit, which was filed by him in the year 1993. Another factor note worthy in his plea is to the effect that he was not aware about the dismissal of the Suit as was not informed about it and he could not file the Application for condonation of delay since he was not keeping well and was away from Mumbai, but the fact that on 24th December 2004 , he instituted another Civil Suit in the same Court in Karad, belie his assertions.

5 The application is therefore, rightly rejected since this is a case of plaintiff who is not punctilious in prosecuting remedy given to him by law and such a litigant do not deserve any sympathy.

Resultantly, the impugned order is upheld.

Writ Petition is dismissed.

SMT. BHARATI DANGRE, J