

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1702 OF 2020

Suresh Pandit Medankar Through POA ...Petitioner
Prasad S. Medankar

Versus

Subhash Laxman Medankar ...Respondent

Ms. Vrushali L. Maindad a/w Ankita Nishad a/w Shaheen
Kapadia - Advocate for the Petitioner.
Mr. Tejas D. Deshmukh – Advocate for the Respondent.

CORAM : NITIN W. SAMBRE, J.
DATE : 11th FEBRUARY, 2021.

P.C. :

1. R.C.S. No.22/2008 for setting aside the sale deed was initiated at the behest of the Petitioner. The said Suit was dismissed in default by trial Court by order dated 03.07.2017. Against the said dismissal order, the Petitioner-Plaintiff moved an Application No. 54 of 2018, for Condonation of delay, which is rejected by the impugned order dated November 1, 2019.

2. The submissions of the learned Counsel for the Petitioner are, the affidavit of examination-in-chief was tendered in the Court on August, 23, 2013 and other proceedings arising out of

money lending Act are also pending. In another Civil Suit the Petitioner has attended the proceedings but defaulted in attending the present suit as he was not aware of the legal procedure, which has resulted into passing of the order impugned. It is further claimed that on 9th September, 2014, the lawyer who was engaged to conduct the suit, has expired and thereafter, the present Petitioner was not keeping well. In support of his contention, certain medical certificates are brought on record. As such, it is claimed that the delay caused in filing application for the restoration is un-intentional and bonafide, as such the order impugned may be quashed.

3. While opposing the claim, the learned Counsel for the Defendant – Respondent would urge that the Petitioner should have been vigilant while conducting the Suit. According to him, in another RCS No. 120 of 1993, the Petitioner attended the proceedings even after the dismissal of RCS No. 22 of 2008, which shows that the Petitioner had no intention to pursue the said suit. Delay has not been properly explained.

4. Affidavit of examination-in- chief of the Petitioner-Plaintiff was tendered on August 23, 2013 and thereafter the lawyer of the Petitioner who was representing interest of the petitioner in the Suit, expired on September 9, 2014.

5. Though it appears that Petitioner, thereafter, sought certain adjournments in the Trial Court and also attended the

proceedings in RCS No. 120 of 1993. However it is not clear as to whether in both the suits the lawyer representing the interest of the Petitioner was the same. From the conduct of the Petitioner, it appears that it cannot be termed that the Petitioner was aware of the procedure to be followed in the matter. He has relied on the medical certificates. In that view of the matter, in my opinion, the case for condonation of delay is made out.

6. As such the order impugned dated November 1, 2019 passed by the 3rd Joint Civil Judge, Junior Division, Khed-Rajgurunagar is hereby quashed and set aside and the Misc. Civil Application No. 54 of 2018 stands allowed on payment of cost of Rs. 25,000/-, to be deposited in the Trial Court, which the Respondent- Plaintiff is entitled to withdraw. Let the amount of cost be deposited within a period of 4 weeks. Petition is disposed of accordingly.

7. It is further clarified that the Petitioner shall not seek any unnecessary adjournments in the trial Court and if such request is made, the Trial court may put the stringent conditions on the Petitioner.

(NITIN W. SAMBRE, J.)