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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3789 OF 2022

Arjun Kisan Bhagat (Died) LRs

PETITIONER

VERSUS

Nana Laxman Tapkire (Died) LRs and Others

RESPONDENTS

.....
Mr. N. C. Garud, Advocate for the petitioner
Mr. S. W. Munde, AGP for respondent - State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 23rd MARCH, 2022

ORDER :

1. This petition impugns order passed by District Judge-9, Ahmednagar, below Exhibit-27 in Trust Appeal No. 2 of 2009, thereby setting aside the *ex parte* order passed against respondent No.2.

2. Learned advocate for the petitioners vehemently submitted that without there being sufficient cause, the delay of more than twelve years is erroneously condoned by the appellate court. By placing reliance on a decision of the co-ordinate bench of this Court in "*Nandkishor Damodhar Wadgaonikar V/s Gajanan Uttamrao Pede*" 2014 (1) Mh.L.J. 343 and of the Apex Court in "*Majji Sannemma Alias Sanyasirao V/s Reddy Sridevi*" AIR

Online 2021 SC 1231, he states that the impugned order cannot be sustained.

3. Scheme Application No. 1 of 2008 (Original Application No. 302 of 1980) was filed by present respondents No.1 to 5 before Joint Charity Commissioner, Pune. Arjun Kisan Bhagat (deceased) had filed Revision Application No.2 of 2008 and Vijay S/o Arjun Kisan Bhagat – present petitioner had filed Revision Application No.3 of 2008, which were heard together and decided by a common judgment dated 29th November, 2008. Revision Applications No.2 of 2008 and 3 of 2008 were dismissed with costs and Scheme Application No. 1 of 2008 was allowed by the Joint Charity Commissioner.

4. Arjun Kisan Bhagat and Vijay Kisan Bhagat, therefore, challenged said common judgment, by filing Trust Appeals No.1 of 2009, 2 of 2009 and 3 of 2009 before the District Court, Ahmednagar. In the year 2009, notices were issued in all the three Trust Appeals. Respondent No.2, however, failed to appear in Trust Appeal No. 2 of 2009 and the said Trust Appeal proceeded *ex parte* against him. After a delay of twelve years, respondent No. 2 filed application Exhibit-27 in Trust Application / Appeal No. 2 of 2009 contending that he needs to be given an opportunity to contest the proceedings on merits, as

he has substantial grievance to make in the proceedings to elucidate the matter in issue. He further contended that he had been pursuing the present cause since last forty years and, therefore, prayed for setting aside the *ex-parte* order dated 14th October, 2009.

5. The said application Exhibit-27, was resisted by the petitioner. However, the appellate court allowed the delay condonation application holding that since there is clubbing of the Trust Appeals No. 1 of 2009, 2 of 2009 and 3 of 2009, there is parity of dispute amongst these proceedings, therefore, the reasons mentioned in the application filed by respondent No.2 that he was under mistaken belief that he had appeared in all the proceedings, seems to be plausible and the proceedings show that respondent No.2 has been pursuing with the present litigation since inception. The appellate court, therefore, set aside the *ex-parte* order passed against respondent No. 2. The petitioner, aggrieved by the said order, has preferred this writ petition.

6. Admittedly, respondents No. 1 to 5 had filed a proceeding bearing Scheme Application No. 1 of 2008 claiming that the Trust is a public trust and present petitioner had filed Revision Application No. 2 of 2008 and 3 of 2008 before Joint Charity

Commissioner, Pune Region, Pune. The Joint Charity Commissioner allowed Scheme Application No. 1 of 2008 and dismissed the Revision Applications No. 2 of 2008 and 3 of 2008. Being aggrieved by the said common judgment and order, the petitioner preferred three Trust Appeals bearing Nos. 1 of 2009, 2 of 2009 and 3 of 2009. Respondent No. 2 appeared in two matters by filing *Vakalatnama*. Respondent No. 2 was under *bona fide* impression that he has caused appearance in all the matters. Thus, it is evident that it was inadvertent error on the part of respondent No. 2 that he did not file *Vakalatnama* in Trust Appeal No. 2 of 2009.

7. It is not disputed that respondent No.2 is appearing in two connected matters i.e. Trust Appeals No. 1 of 2009 and 3 of 2009. In these facts, I am inclined to accept the contention of respondent No.2 that he was under *bona fide* impression that he has caused his appearance in all the matters. In my view, the appellate court was right in allowing the said application though there was delay of more than twelve years. The appellate court was justified in allowing the delay condonation application by accepting the reason given by respondent No.2. The appellate court has judiciously exercised the discretion in favour of respondent No.2.

8. There cannot be any dispute about the ratio in "**Nandkishor Damodhar Wadgaonkar**" (*supra*) wherein, the co-ordinate bench of this court has held that though the Court can exercise discretion while entertaining the prayer for condonation of delay, the Court has to exercise discretion in a judicious manner. In that case, it was found that the trial court was convinced that there is no sufficient cause to condone the delay, however, merely in order to do justice to the plaintiff, had condoned the delay. Such are not the facts of the present case.

9. In "**Majji Sannemma @ Sanyasirao**" (*supra*), there was delay of 1011 days in preferring the second appeal, the appellant claimed to be sick and advised bed rest. No explanation, whatsoever, was provided for delay from the end of her bed rest till filing of the appeal.

In these facts, the Apex Court held the order condoning the delay is unsustainable. In the case in hand, admittedly, respondent No.2 is prosecuting the connected two appeals i.e. Trust Appeal No. 1 of 2009 and 3 of 2009, since beginning. In that view of the matter, the ratio in the above ruling would not help the case of the petitioner.

10. Reasonable and fair opportunity to contest the matter on

merits needs to be given to respondent No. 2, which is given by the appellate Court. This Court does not find any error, illegality or perversity in the order impugned in this petition. The writ petition, being devoid of any merits, is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

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