

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 160 OF 2021

Sanjay S/o. Banusaheb Thorat,
Age : 43 years, Occupation : Agril.,
R/o. Naigaon, Tq. Paithan, Dist. Aurangabad
At present – Sai Nagar, Plot no. 1089,
N-6, CIDCO, Aurangabad

.. Appellant
(Deft. No. 1)

VERSUS

1] Dattatray S/o. Asaram Ugale
Age : 55 years, Occupation : Agril.,
R/o Naigaon, Tq. Paithan,
Dist. Aurangabad (Plaintiff)

2] Hiranman S/o. Chagan Bangre
Age : 59 years, Occupation : Agril.,
R/o. Naigaon, Tq. Paithan,
Dist. Aurangabad (Defendant no. 2)

.. Respondents
(No. 1 – Plaintiff
No. 2 – Deft. No. 2)

AND

CIVIL APPLICATION NO. 3677 OF 2021

(Sanjay Banusaheb Thorat V. Dattatray Asaram Ugale and anr.)

...
Mr. A.B. Kale and Mr. G.L. Deshpande Advocate for the appellant
Mrs. J.S. Aute, Advocate for respondent no. 1
...

CORAM : MANGESH S. PATIL, J.

DATE : 2 MARCH 2022

ORAL ORDER :

Mr. Kale for the appellant submits that pursuant to the liberty granted by order dated 10-08-2021, he has already filed affidavit along with the track report certifying that private notice was duly served to the respondent no. 2. He submits that no relief is being claimed against the respondent no. 2 and he is merely a formal party. He,

therefore, requests that though the service by regular mode is awaited since the respondent no. 1 has already appeared, the matter may be heard for admission. The learned advocate Mr. Aute for the respondent no. 1 agrees.

2. Heard both sides.

3. The second appeal is admitted on the following substantial question :-

Whether the observations and conclusions of the lower appellate court in refusing to condone the delay in filing the appeal against the judgment and decree in R.C.S. 12 of 2010 are perverse and arbitrary and ignore the material facts brought on record by the appellant ?

4. The respondent no. 1 had filed the suit for perpetual injunction against the appellant and respondent no.2 restraining them from obstructing his possession over the suit property. The suit was decreed by judgment and order dated 27-07-2016.

5. According to the appellant, the dispute in question pertains to a land and was already compromised between the appellant and the respondent no.1 by way of a compromise decree in R.C.S. no. 25 of 2001. He was, therefore, not conscious about the fresh dispute being created by the respondent no.1. For this reason he did not even contest the suit. The learned advocate who was representing him before the trial court also died in the year 2016. He himself was suffering from mental illness and was taking treatment of a psychiatrist

since the year 2016. When respondent no. 1 obstructed his possession in the year 2019 that he became aware about the decision of the suit and, thereafter, took steps to challenge the judgment and decree by preferring the appeal. Since there was delay, application for its condonation was moved but it was dismissed by the judgment and order under challenge in this second appeal.

6. (a) The learned advocate Mr. Kale for the appellant, in consonance with the stand of his client submits that the appellant was not aware about the decision which has resulted in causing the delay. There are circumstances sufficient to indicate that he got the knowledge belatedly without there being any deliberate attempt on his part. His advocate was dead and even he was suffering from mental illness about which sufficient material was produced before the lower appellate court, still, by order under challenge it failed to notice such evidence and recorded a perverse finding that no medical record was brought to substantiate the ground of mental illness.

(b) The learned advocate Mr. Kale would further submit that the appellant had testified to corroborate the grounds being put forth for condonation of delay. He specifically stated about having acquired the knowledge when the respondent tried to obstruct his possession in the year 2019. Soon thereafter he took steps and preferred the appeal.

(c) There was sufficient cause for condoning the delay. The dispute pertain to the right of immovable property. Lenient view be

taken and if necessary the respondent no. 1 can be compensated by imposing costs, to have decision on merits rather than by default.

7. Learned advocate Mrs. J. S. Aute for the respondent no. 1 submits that there was no sufficient cause. A false ground was taken of having acquired the knowledge of the decision belatedly. The appellant was even not prompt in defending the suit. He did not appear in the suit initially and, thereafter though appeared through the advocate, did not turn up on the dates of the hearing. He had filed separate suit i.e. R.C.S. no. 185 of 2019. A specific observation was recorded in his suit while passing the order on temporary application as to how he had not purposely disclosed the decision in R.C.S. no. 12 of 2010. All such conduct of the appellant clearly indicates that he was bent upon to harass the respondent no. 1. Causing delay is one more attempt at the same end. There being no sufficient cause to condone the delay of 1111 days, the lower appellate court was justified in rejecting the application. The second appeal be dismissed.

8. I have carefully gone through the papers and considered the rival submissions.

9. True it is that in normal course, while considering requests for condonation of delay under section 5 of the Limitation Act, 1963, the courts have to take a pragmatic view, for, a party is not to gain anything by allowing his right to get extinguished by lapse of time. However, simultaneously, it is necessary to bear in mind the law of limitation has its own place in the statute book. There has to be termination of any

litigation and the parties are expected to possess such legitimate expectation. If stale and old claims are allowed to be entertained by condoning the delay, it would certainly shake the belief of an ordinary litigant that the litigation can terminate after a reasonable time.

10. Bearing in mind the propositions, if one examines the matter in hand, as it is, there was a delay of 1111 days in challenging the decree passed by the trial court. Ex facie, the delay is enormous and was required to be explained by cogent and convincing evidence to demonstrate that there was some sufficient cause for the appellant to not to challenge the judgment and decree in time.

11. The appellant did testify about the grounds mentioned herein-above to substantiate his claim of there being sufficient cause. However, simultaneously, it needs to be borne in mind that there are several other circumstances which would clearly indicate that by no stretch of imagination can it be said that the delay had occasioned bona fide. Rather, there are circumstances to indicate that the delay was intentional and deliberate.

12. Admittedly, the parties i.e. the appellant and the respondent no. 1 were already in a dispute in the form of R.C.S. no. 25 of 2001 and though it was compromised way back in 2001, the dispute had received a new lease of life in the form of the present suit which was filed in the year 2010.

13. During his cross-examination, the appellant specifically admitted that his family members were not aware about the filing of the suit still mentions about having appeared in that suit through an advocate. Though there is material to show that the advocate representing him had died in the year 2016, there is record to demonstrate that the respondent no.1 obstructed his possession after the decision was rendered by the trial court and about which he had made the complaint to the Police in the month of May – 2017. Even thereafter, in the year 2019, precisely on 01-06-2019, he had made complaints to the Police putting up a grievance that the respondent no. 1 was obstructing his possession. Taking into account the history of the litigation, any ordinary man in his place would have been prompt enough to contact the lawyer and keen to get the knowledge as to what had happened in the suit if it was already pending between the parties once the respondent no.1 had started obstructing his possession, more so when he even admitted that his wife has been an advocate practising in the courts.

14. True it is that there is evidence to show that the appellant was taking treatment of a psychiatrist, however, there is no evidence to show that the mental illness was of such serious nature as would have deprived him of following the ordinary pursuits. If it be so, it was expected that the appellant should have explained as to what steps were taken by him after his possession was obstructed by the respondent no. 1 in spite of the pending litigation in which he had

already appeared. When he was prompt enough to approach the Police by filing written complaint on 01-05-2017, his evidence is clearly insufficient to explain such a delay.

15. Again, assuming for the sake of arguments that he acquired knowledge about the possession as is being averred by him on 06-08-2019, still, the appeal was not preferred promptly thereafter. This circumstance also indicates that even after his possession was repeatedly obstructed in the first part of the year 2019, he was not prompt enough to take emergent steps to file the appeal.

16. Though the observations of the lower appellate court to the extent of absence of medical evidence regarding mental illness of the appellant are perverse, the other reasoning given by it that there was no sufficient ground to condone the delay, cannot be said to be perverse or arbitrary.

17. Hence I answer the question in the negative. The appeal is dismissed.

18. All pending civil applications stand disposed of.

[MANGESH S. PATIL]
JUDGE

arp/