

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

911 WRIT PETITION NO.8792 OF 2015

**CHANDRAKALA KACHARU SONWANE
VERSUS
SANTRAM HARIBHAU SHELKE**

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Advocate for Petitioner : Mr. Vilas P. Savant

Advocate for Respondent : Mr. A.P. Tapse

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CORAM : SANDEEP V. MARNE, J.

DATE : 21-12-2022

PER COURT :

. By this petition, petitioner has challenged the order dated 29.03.2008 by which her application for restoration of the suit by condoning the delay of 75 days came to be rejected.

2. Ordinarily, the order could have been set aside by this Court without any difficulty as the delay in applying for restoration was only of 75 days. However after the trial Court refused to restore the suit on 29.03.2008, petitioner went into deep slumber and filed the present petition challenging that order only on 13.07.2015.

3. Petitioner has explained the delay of more than 7 years by making following averments in the petition.

“7. The petitioner states that, even after passing of the order dated 29.03.2008 on an application seeking delay

condonation in restoration application, the applicant was under the treatment for her stomach pain and meanwhile she has undergone a surgery for the same. The petitioner states that, from last some years the petitioner is a patient of the stomach pain and therefore the petitioner was bed ridden and meanwhile undergone a surgery and therefore even after the passing of the impugned order the petitioner could not approach to this Hon'ble Court. The petitioner states that, however now the condition of the petitioner is a normal one and therefore after getting the certified copies of the order and applications, the petitioner approached to the advocate at Aurangabad and filed the present petition. The petitioner states that, in the said process, some time is caused and therefore some delay is caused, however in the interest of justice it is necessary to condone the same."

4. Thus the delay of more than 7 years is sought to be explained by petitioner submitting that she was under treatment for stomach pain and underwent a surgery. It is also sought to be contended that she was bed ridden on account of which she could not approach this Court. Similar justification was given to justify the delay of 75 days in applying for restoration in para-5 of the petition.

5. Respondent has filed affidavit-in-reply in which orders passed in various proceedings initiated by petitioner have been brought on record. It appears that simultaneously with the suit, petitioner was also pursuing her remedies before the Revenue Officials with regard to mutation entries. Petitioner seem to have filed an appeal before the Additional Divisional Commissioner in the year 2008. Respondent herein has filed Regular Civil Suit No.108 of

2005 seeking injunction against petitioner. It appears that petitioner defended that suit between 2005 to 2010. She appeared before the Trial Court from time to time in that suit and led her evidence. The suit came to be decreed on 25.08.2010. After the suit came to be decreed on 25.08.2010, petitioner filed Regular Civil Appeal No.127 of 2010 on 20.09.2010. If petitioner was really sick or bed ridden as sought to be contended in para-7 of the petition, then how she was in a position to participate in the proceeding of R.C.S. No.108 of 2005 upto 25.08.2010 and how she filed R.C.A. No.127 of 2010 on 20.09.2010 by giving necessary instructions to her advocate remains a mystery. Her participation in that suit and filing of appeal before the District Judge completely falsifies the story that she was sick or bed ridden.

6. In addition to the proceedings initiated before the Revenue Officials as well as defending R.C.S. No.108 of 2005, petitioner also appeared to have exercised her remedy under the provisions of the Bombay Money Lenders Act, 1946 before the Assistant Registrar Co-operative Societies, Gevrai which resulted in rejection of her application by order dated 12.09.2006.

7. The fact that petitioner was in a position to prosecute /

defend above four proceedings before different Courts / authorities further falsifies the contention that she was incapacitated from filing the present petition on account of her old age or illiteracy. On the other hand, petitioner seems to be fully aware of her legal rights as well as remedies and has exercised the remedies from time to time. Immediately after R.C.S. No.108 of 2005 was decided against her on 25.08.2010, she was quick enough to file R.C.A. No.127 of 2010 on 20.09.2010. It is therefore difficult to believe that petitioner suffered any incapacity on account of old age or illiteracy in adopting remedy in respect of the order dated 23.09.2008.

8. Petitioner has already embroiled defendant in four different litigations as observed above. The suit was filed by her in the year 2006 which came to be dismissed on 29.09.2007. By now, a period of 15 long years has passed since the date of dismissal of the suit. I have already observed above that the justification sought to be given for belated filing of the present petition in para-7 of the petition appears to be false. This Court would not come to the assistance of a litigant who attempts to mislead this Court by making false averments.

9. Considering the conduct of petitioner as also passage of

long period of time, this Court would not be justified in granting any equitable relief in favour of petitioner in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India.

10. In view of the above, the writ petition is dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)

GGP