

28.3433.20 wp.doc

ISM

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 3433 OF 2020**

MR. GOVIND SHRINIWAS SHARMA
THROUGH HIS C.A. HOLDER

....PETITIONER

V/s.

KAI. BHAUSAHEB HIRE SMARNIKA
SAMITTEE TRUST AND ORS

.....RESPONDENTS

Mr. Akhil Kupade i/b Manoj Harit & Co. Advocate for the Petitioner
Mr. Ajinkya J. Jaibhave Advocate for the Respondent

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 12, 2022.

P.C.:

1) Petitioner's Special Civil Suit No. 68/1998 for specific performance was dismissed on 26/03/2010. Feeling aggrieved, Petitioner took out Civil Misc. Application No. 74/2011 for condonation of delay in preferring Civil Appeal against the aforesaid Judgment and Order of dismissal of Suit. The aforesaid Application for condonation of delay came to be rejected by District Judge-2, Malegaon vide order impugned dated 25/09/2018. As such, this Petition.

2) In support of cause cited for condoning the delay before the Appellate Court, Petitioner has come out with a ground of ill health. So as to establish the same, he has examined treating doctor. Based on above, the submissions are, Petitioner was neither physically nor mentally fit at relevant time to instruct Power of Attorney Holder to prefer Appeal.

3) While countering the same, counsel for Respondent would urge that Suit was prosecuted through power of attorney holder and even if the Petitioner was in disposed because of his health condition, fact remains that Appeal could have been preferred through power of attorney holder. He would further claim that ailment is not such which restricts the movement of the Petitioner to file Appeal.

4) As such, according to him, Petition is liable to be dismissed.

5) Considered submissions.

6) In support of the claim of the Petitioner that he was in-disposed and was under the treatment of a psychiatrist, examined Dr. Satyajit Shah whose testimony went unchallenged.

7) Court below considered the fact that Petitioner was pursuing Suit through power of attorney holder as such, power of attorney

holder could have even filed an Appeal.

8) Fact remains that, doctor who was examined in support of the claim of the Petitioner has also deposed that Petitioner was under treatment of Dr. Sachdev for psychiatric issues. As such, there appears to be some substance in the case of Petitioner that delay caused in preferring Appeal was bonafide and unintentional. Petitioner has already shown his bonafides by depositing cost of Rs. 50,000/-.

9) In that view of the matter, order impugned dated 25/09/2018 passed by learned District Judge-2, Malegaon is quashed and set aside. Delay stands condoned.

10) Fresh notice to Respondents is not required as it is expected of the Court below to decide the Appeal expeditiously and in any case within period of 6 months from today.

11) Needless to clarify that Respondents shall be entitled to withdraw cost of Rs. 50,000/-

12) Petition stands disposed of in above terms.

[NITIN W. SAMBRE, J.]