

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

APPEAL AGAINST ORDER NO. 38 OF 2018

APPELLANT: Nitin s/o Dnyaneshwarrao Gulhane
(Ori. Deft. No.2 on RA) Aged about 46 years, Occu:
Cultivator, R/o Wadgaon (Big),
Yavatmal, Tq. & Dist. Yavatmal.

VERSUS

RESPONDENTS 1. Waman s/o Ganpatrao Shirbhate
(Ori. Plff. On RA) Aged about 75 years, Occu:
Cultivator & Business, R/o Vaidhya
Nagar, near Himalaya ICE Factory,
Arni Road, Yavatmal, Tq. & Dist.
Yavatmal.

2. Gunwant s/o Ganpatrao Shirbhate
(dead) thr. Legal Representatives

2(1) Ashok Gunwantrao Shirbhate,
Aged 45 yrs. Occu. Business,
r/o Talegaon Dashasar (Patache), Tq.
Dhamangaon RLY, Dist. Amravati.

2(2) Babarao Gunwantrao Shirbhate,
Aged about 43 yrs. Occu. Business,
r/o Pimpalgaon old locality Nagar

Panchayat Division, Old
Grampanchayat Yavatmal Tq. & Dist.
Yavatmal.

2(3) Govinda Gunwantrao Shirbhate,
Aged 41 years. Occu: Business,
r/o Wadgaon Road Prabhag No.28
Rani Sati Nagar, Jaisingpure Layout,
Behind Pruthiraj Nagar, Back side
Amrut Garden, Wadgaon Road
Yavatmal, Tq. & Dist. Yavatmal.

2(4) Sanjay Gunwantrao Shirbhate,
Aged 38 yrs. Occu: Driver,
r/o Wadgaon ROAD, Prabhag No.28
Ranisati Nagar, Jaysingpure Layout,
behind Pruthiraj Nagar, Backside of
Amrut Garden, Wadgaon Road,
Yavatmal, Tq. & Distt. Yavatmal.

Shri Abhay Bhide, counsel for the Appellant.
Shri R.R. Dawda, counsel for the Respondent No.1.

CORAM : SMT. M.S. JAWALKAR, J.
RESERVED ON : 01/02/2022
PRONOUNCED ON : 09/02/2022

ORAL JUDGMENT :

1] The appellant being aggrieved by the judgment and order of remand dated 23/04/2018 passed by the District Judge, Yavatmal in Regular Civil Appeal No. 4/2015, preferred this present appeal against order.

2] It is submitted by learned counsel Shri A.V. Bhide for the appellant that respondent No.1/Original plaintiff filed suit in the year 2003 for declaration of ownership of the suit property on the basis of Will executed by his mother and also sought a declaration that the sale deed dated 4/07/2000 and 28/7/2000 executed by deceased Bapurao in favour of the appellant in respect of suit plot were null and void. The objection was raised by the appellant, as regards valuation of Court Fee on 18/9/2014. The learned Trial Judge directed respondent no.1 to make the correct valuation and to pay the proper Court Fee. The time of 14 days was granted. The said time was further extended. Lastly, on 13.11.2014, he applied for an extension of time on the ground of illness of the plaintiff. The learned trial Judge rejected the application for extension of

time on the ground that the time could not be extended beyond 30 days vide order dated 24.11.2014. Consequently, the learned Trial Judge rejected the plaint under Order VII Rule 11 of CPC. The plaintiff filed RCA 4/2015 challenging the order passed by Trial Court. The learned Adhoc District Judge remanded the case to the trial court for a decision on merit. The said order is under challenge before this Court.

3] It is submitted that the learned Appellate Court was not justified in reversing the order of rejection of the plaint. The Appellate Court was not justified in holding that the delay was liable to be condoned specifically when there are no details of ailment of supporting documents. There was no sufficient and cogent reason assigned by the plaintiff for getting the time for correction of valuation extended beyond the period of 30 days, as prescribed by Section 148 of the Code of Civil Procedure. Learned counsel relied on citation in ***Salem Advocate Bar Association v/s Union of India***, reported in ***AIR 2005 SC 3553***, in support of his contention that period of 30 days cannot be extended, unless for the reason which was beyond the control

of the applicant. The reason of illness given for extension of time and inquiry to the sub-registrar office for valuation cannot be held to be a good ground. There is no substance in this contention. As value in sale deed only needs to be looked into to decide Court fee and presence of appellant is not required. Hence, order passed by learned District Judge is liable to be set aside.

4] In reply, learned Advocate Shri R.R Dawda for the respondent submitted that suit is filed in the year 2003 and this objection was raised at the time of evidence in 2014, specifically when plaintiff's cross was going on. The order passed by Trial Court in 2014 after about 11 years of filing of suit. After the matter was remanded by the learned Appellate Court, suit valuation is corrected and Court fee is also deposited. So far as ailment of plaintiff is concerned, it is age related problem and he is more than 63 years of age at the time of passing of order.

5] It is pointed out that the issues were framed on

17/02/2004 and cross-examination was partly concluded. Thereafter, defendant no.2 moved an application under Order VII Rule 11. Both the parties were directed to disclose the market value of the suit property. Accordingly, the plaintiff disclose the market value and valued the suit accordingly. The plaintiff thereafter directed to correct the valuation within 14 days vide order dated 18/09/2014. Thereafter, plaintiff sought adjournment for compliance of said order and lastly application Exhibit 141 rejected by the trial Court, consequently rejected the plaint. It is pointed out that the period for correction of suit valuation and deposit of Court fee would expired on 02/11/2014 and last application is filed on 13/11/2014. Thus there is hardly a question of extension of 10 days. It is not the case that plaintiff was not ready and willing to pay the said Court fees. However, he is aged more than 63 years and for that reason, he could not approach his counsel to give instructions. The reason stated is perfectly justified and there is no intention of causing any delay. In fact, the learned trial Court had failed to consider this fact that suit is of year 2003 and objection raised in the year 2014, almost after the period of 11 years.

Learned counsel relied on *AIR 2016 SC 1090 Nashik Municipal Corporation v/s M/s R. Bhandari and another*, in support of his above contention.

6] I have heard both the counsel at length. Perused the documents placed on record. Rival contention now falls for my determination.

7] After considering the facts, it appears that the suit is filed in the year 2003 and issues were framed, evidence was recorded partly when the application for rejection of plaint came to be filed, there was order passed on 18/10/2014 to comply the order within period of 14 days. However, on 13/10/2014 plaintiff filed an application at Exhibit 140 for enlargement of time which was also came to be allowed and the matter was posted on 13/11/2014. On that day, application was moved for extension of time. However, the said application came to be rejected only on the ground that the reason putforth for extension of time i.e. ailment is not supported by any documents and the period of more than 30 days had been

already availed by the plaintiff. This rejection was challenged by filing appeal. the Appellate Court allowed the appeal and directed the plaintiff to comply the order dated 18/9/2014 within 8 days from the date of appearance. The orders below Exhibit 1 and Exhibit 141 passed by learned Civil Judge, Junior Division has set aside and suit was restored. The plaintiff / respondent herein duly complied with the orders of the Appellate Court by carrying out necessary amendment and by depositing Court fee. There was no stay granted by this Court. I do not see any perversity and illegality in the order passed by the learned Appellate Court. Considering the peculiar fact that the suit is of 2003 and evidence was partly recorded, in view thereof, in the interest of justice, the Appellate Court has rightly restored the suit. So far as reason putforth by the plaintiff is concerned, it is just and sufficient, as his age itself appears to be more than 63 years at the time of passing order. As held in *Nashik Municipal Corporation (supra)*, wherein the Court also has taken into consideration the *Salam Bar Association v/s Union of India* on which learned counsel for appellant relied. The Hon'ble Apex Court held as under :-

“15. In terms of Section 148 C.P.C. court has the discretion to extend the time. The words “not exceeding thirty days in total” have been inserted by the C.P.C. (Amendment) Act, 1999. Observing that if the act could not be performed within thirty days for the reasons beyond the control of the parties, the time beyond maximum thirty days can be extended under Section 151 C.P.C., in Salem Advocates Bar Association, T.N. vs. Union of India (2005) 6 SCC 344: (AIR 2005 SC 3353 Para 45), this Court in para (41) held as under:

“41. The amendment made in Section 148 affects the power of the court to enlarge time that may have been fixed or granted by the court for the doing of any act prescribed or allowed by the Code. The amendment provides that the period shall not exceed 30 days in total. Before amendment, there was no such restriction of time. Whether the court has no inherent power to extend the time beyond 30 days is the question. We have no doubt that the upper limit fixed in Section 148 cannot take away the inherent power of the court to pass orders as may be necessary for the ends of justice or to prevent abuse of process of the court. The rigid operation of the section would lead to absurdity. Section 151 has, therefore, to be allowed to operate fully. Extension

beyond maximum of 30 days, thus, can be permitted if the act could not be performed within 30 days for reasons beyond the control of the party. We are not dealing with a case where time for doing an act has been prescribed under the provisions of the [Limitation Act](#) which cannot be extended either under Section 148 or [Section 151](#). We are dealing with a case where the time is fixed or granted by the court for performance of an act prescribed or allowed by the court.”

8] As such, I do not see any illegality or perversity in the order passed by learned Appellate Court. The learned Appellate Court rightly appreciated that at the time of filing of the suit he has paid the Court fee as per the valuation shown by him in the plaint and he proceeded with the matter. He led the evidence and during the cross-examination defendant no.2 raised the objection and filed application for rejection of plaint. It is rightly appreciated that the intention of the plaintiff is to proceed with the matter. Even after passing of the order also, he shown his willingness to correct the valuation of the suit property. In view of the above facts, rejection of plaint would have caused grave injustice to the plaintiff. In view of peculiar

facts and circumstances, appeal is liable to be dismissed.

Accordingly, I proceed to pass the following order.

ORDER

- a) Appeal is dismissed.
- b) Pending application (s), if any, stand(s) disposed of. No order as to costs.
- c) Record and Proceedings be returned immediately.

[SMT. M.S. JAWALKAR, J.]