

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3951 OF 2022

Narhari Keshav Pawar (Died)

Through L.Rs.

Trimbak S/o. Narhari Pawar

.... Petitioner

Versus

Tatya S/o. Narayan Pawar (Died)

Through L.Rs.

Ram S/o. Tatya Pawar

and others

.... Respondents

.....

Mr. P.R. Katneshwarkar, Advocate h/f Mr. Shashikiran N. Patil,
Advocate for the Petitioner

Ms. Jayashri Nawale, Advocate h/f Mr. V.D. Salunke, Advocate
for Respondent Nos.1(1) to 1(3) & 1(6) to 1(9)

Mr. S.B. Choudhari, Advocate for Respondent No.1(5)

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 08th JUNE, 2023

ORDER :

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner challenges the order dated 04/12/2018 passed by the learned 4th Civil Judge, Junior Division, Osmanabad in Civil M.A. No.130 of 2012, thereby rejecting the application for condonation of delay.

2. The petitioner/father filed Regular Civil Suit No.75 of 1992 for possession of Survey No.313 admeasuring 12 Acres 16 *Gunthas* situated at village Padoli (Akubai), Taluka and

District Osmanabad against the respondents/defendants. Defendants resisted the Suit by filing written statement. Initially, the Suit was dismissed in default on 23/04/1993, and the same was restored on 18/02/1997. During the pendency of the Suit, father of the petitioner expired on 12/11/1997. Thereafter, the Suit was fixed for hearing. In spite of ample opportunities granted to the plaintiffs, no evidence was led, and hence, the Suit was dismissed in default on 26/06/2003. The petitioner filed Civil M.A. No.130 of 2012, seeking restoration of the Suit alongwith application for condonation of delay of 8 years 5 months and 24 days. Application was opposed by the respondents. Evidence was led by the parties, and the Trial Court rejected the application. Hence, this petition.

3. Heard the learned advocate for the petitioner and the learned advocates for the respondents. Perused the writ petition memo, annexures thereto and the impugned order.

4. It is clear from the record that original plaintiff Narhari expired on 12/11/1997. In that view of the matter, the Suit abated at that point of time. However, this fact was not brought to the notice of the Trial Court by any of the parties, and the Suit continued. The Suit was kept for evidence and

since the plaintiff, who was no more at that point of time failed to lead evidence, the Suit was dismissed in default on 26/06/2003.

5. The petitioner, who is legal heir of deceased plaintiff Narhari, applied through advocate for certified copy of the gift deed. The endorsement on Exhibit-1 of Regular Civil Suit No.75 of 1992 shows that copy of the original gift deed was taken out in the year 2008, and thereafter the present miscellaneous application for restoration and delay condonation is filed in the year 2013.

6. The Trial Court has rejected the application mainly on the ground that the petitioner though had obtained certified copy of the original gift deed in the year 2008, has failed to apply immediately thereafter, and has filed application only in the year 2013. The said delay is unexplained by the petitioner.

7. The Trial Court has failed to appreciate the contention of the petitioner that in fact the Suit abated in the year 1997 itself on the death of the original plaintiff Narhari. The petitioner though has applied for certified copy of original gift deed, it cannot be presumed that the petitioner had knowledge about the pendency of the Suit filed by his father.

Even if, the knowledge is presumed, the petitioner could not have been benefited seeking restoration and condonation of delay, belatedly. In these facts of the present case, it cannot be presumed that the petitioner had knowledge about the pendency of the Suit. As it is observed supra, even the defendants had no knowledge about the death of the original plaintiff in the matter.

8. While rejecting the delay condonation application, the Trial Court has failed to consider the principles laid down in the rulings cited before it in the proper perspective. The Trial Court has ignored the settled legal position that delay has to be condoned liberally. Substantial rights of the petitioner and the defendants in the immovable property are involved in the Suit, which are required to be adjudicated on merit by the Trial Court.

9. For the aforesaid reasons, the impugned order cannot be sustained, and the same is hereby quashed and set aside subject to condition that the petitioner shall pay costs of Rs.25,000/- to the contesting respondents in the present petitioner. Costs to be paid in the trial Court.

10. Taking into consideration the fact that the Suit is of the year 1993, the Trial is expedited, and the Trial Court shall decide the Suit within six months from the date of receipt of the writ of this order.

11. Parties shall co-operate.

12. With these directions, the writ petition is disposed of.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane