

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 271 OF 2018

Dagdu Jivaba Patil

.. Applicant

Versus

Krishna Daulu Patil & Anr.

.. Respondents

.....

- Mr. Abhijit Kulkarni a/w Ms. Sweta Shah & Mr. Aditya Mahadik for Applicant
- Mr. Prajakt M. Arjunwadkar for Respondent Nos. 1 and 2

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 05, 2023

P.C.:

1. Heard Mr. Kulkarni, learned Advocate for Applicant and Mr. Arjunwadkar, learned Advocate for Respondents.

2. The present Civil Revision Application has been filed impugning the order dated 13.11.2017 passed by the learned Appellate Court below Exh. 1 in Civil Misc. Application No. 117 of 2013.

3. Appellants / Applicants (Respondents herein) filed Application for condonation of delay of 2731 days in filing the statutory First Appeal. It was contended by Appellants that the Judgment and decree dated 30.09.2005 passed by the learned Trial Court in R.C.S. No. 71 of 1999 was passed exparte behind their back and they had no knowledge whatsoever about the same. It was

further stated that the Appellants were the residents of a rural remote area in Shahuwadi Taluka and did not have proper knowledge about the issue of legal limitation. That apart, Appellants have also contended that in so far as the suit properties are concerned, they are in their possession and are also standing in their names in the Revenue Record. This Application of the Appellants was countered by the Respondent (Applicant herein) before the Appellate Court by filing his reply dated 17.04.2013 refuting the submissions and contentions of the Appellants. It was contended by the Respondent that in another suit i.e. R.C.S. No. 71 of 1999 filed by another branch in respect of the suit properties relating to partition, notices were issued by the same Trial Court to the Appellants and in that view of the matter, they were aware of the present proceedings. This is so stated because the learned Trial Court had disposed of R.C.S. No. 71 of 1999 on merits on 30.09.2005. That apart, Respondent had also stated in his counter that he does not deny 50% share of the Appellants in the suit property which is the subject matter of Suit No. 117 of 2013.

4. Learned Trial Court after hearing the parties passed a reasoned order and allowed the Application with costs of Rs. 25,000/- to be paid to the opponent within a period of four weeks. The reasons which weighed with the learned Appellate Court have been succinctly stated in paragraph Nos. 11 and 12 of the said order which read thus:-

- “10. *Heard both the sides. Gone through the record. On careful perusal of delay condonation application, there is no whisper or averment regarding the compromise talks. The Plaintiff produced the copy of Exh. 1 in R.C.S. No.81/2000 filed by Defendant Krishna Patil against the Plaintiff for injunction. That suit came to be decreed on 19-03-2002. Accordingly, the Execution Petition No. 1/2010 came to be filed, in which the Defendant filed an application for police protection. This shows that, the Defendants are well versed with the Court proceedings. Hence, the submission of the Ld. Advocate for the Defendants about the Defendants being from rural area and not knowing the court procedure is not acceptable. The next contentions of the Defendants is about compromise talks. In the affidavit of examination in chief, for the first time, the ground of compromise talks is taken. The evidence without pleading can not be considered. Hence, this ground is also not acceptable. The next contention of the Defendants is about fraud played by Plaintiff. In short, it is contended that, the Plaintiff made false promise of withdrawal of the suit on the basis of compromise. The pleadings shows otherwise. Hence, the authority cited by Defendants regarding fraud are not applicable. The Defendants are prosecuting suit filed by them for injunction, however, at the same time, the suit for partition was pending before the same Court. This shows the conduct of the Defendants in the suit filed for partition. The Defendants, on merit contended that, the Plaintiff has no concerned with the properties held by their family. However, this contention is also not acceptable as the Plaintiff, prima facie shows the genealogy and his concerned in the suit properties. Apart from all this, the suit was filed for partition. Hence, to adjudicate the shares of Plaintiff and Defendants, the huge delay, in absence of any sufficient cause, will have to be condoned to meet the ends of justice.*
11. *After passing of the exparte judgment and decree, the Plaintiff has filed execution petition and has paid an amount more than Rs. 37,000/for measurement of the suit properties. If the delay is condoned, the appeal will have to be heard on merit and it will take its own time. In short, the Plaintiff will suffer loss. If the huge delay is condoned, the Plaintiff will suffer inconvenience. However, considering the nature of decree and the conduct of the Defendants, the delay will have to be condoned and at the same time, the inconvenience caused to Plaintiff, will have to be adequately compensated. Since the Defendants have not furnished sufficient cause and considering the expenses incurred by the Plaintiff, some exorbitant costs needs to be imposed. Hence, I pass the following order:-*

ORDER

The Application is allowed with cost of Rs. 25,000/- to be paid to the Opponent within a period of 4 weeks from today failing which, the application stands dismissed, without further reference to the Court”.

- 4.1.** It is seen that the Appellate Court has not only

considered the submissions of the parties but has also considered the other issues and most notably the issue relating to compromise talks between the parties as also the genealogy in respect of the said family.

5. Mr. Kulkarni would contend that the learned Appellate Court has in fact arrived at the conclusion despite the gross delay in filing the Appeal and no sufficient cause having been shown by Appellate Court to enable them to seek condonation of delay. He submitted that in view of this finding arrived at by the learned Trial Court in paragraph No. 10 of the impugned order, it was incumbent upon the Court to dismiss the Application and not grant the same. He submitted that by granting the Application, the learned Court has committed a jurisdictional error and therefore the impugned order deserves to be set aside.

6. Mr. Arjunwadkar, learned Advocate for Respondents submitted that the reasons given by the learned Appellate Court in paragraph Nos. 10 and 11 of the impugned order are cogent and considering that the decree dated 30.09.2005 was passed exparte, the parties should not be non-suited. He fairly admitted to the issue of delay but submitted that adequate reasons have been given by the Appellants in their Application before the learned Appellate Court and the Respondents have been put to costs by the Court.

7. Having considered the rival submissions and on perusing the reasons given by the learned Appellate Court, I am of the opinion that only after analyzing the issue and considering the facts, the finding has been returned. Hence considering the nature of the exparte decree and the conduct of Appellants, the delay deserves to be condoned but at the same time, the inconvenience caused to the Respondent would have to be adequately compensated. I am in agreement with the reasoning of the Appellate Court given in paragraph No. 10 of the impugned order.

8. Mr. Kulkarni has referred to and relied upon the following decisions of the Supreme Court in support of his case:-

- (i) **Balwant Singh Vs. Jagdish Singh & Ors.**¹;
- (ii) **Katari Suryanarayana Vs. Koppiseti Subba Rao**²;
- (iii) **Shanti Devi & Ors. Vs. Kaushaliya Devi**³;
- (iv) **Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi & Ors.**⁴;
- (v) **Pundalik Jalam Patil Vs. Executive Engineer Jalgaon Medium Project & Anr.**⁵

8.1.. However, in view of the guidelines laid down by the Supreme Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors.**⁶ in paragraph 21

1 (2010) 8 SCC 685
2 (2009) 11 SCC 183
3 (2016) 16 SCC 565
4 (2022) 0 AIR (SC) 332
5 (2008) 17 SCC 448
6 (2013) 12 SCC 649

thereof after analysing the law relating to condonation of delay and sufficient cause under Section 5 of the Limitation Act and further additional guidelines laid down in paragraph 22 of the said decision, I am of the opinion that the impugned order deserves to be sustained.

9. In view of the above, I do not find any reason to interfere with the impugned order. Civil Revision Application is accordingly rejected.

[MILIND N. JADHAV, J.]

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