

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5147 OF 2023

Smt. Sonal Prabhakar Patole
& Others.

...Petitioners.

Versus

Shri. Ajit Tukaram Mote and Others. ..Respondents.

Mr. Nilesh Wable, Ms. Bhavika Shinde i/b Mr. Umesh Mankapure for the petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : July 14, 2023.

P. C. :

1. By this petition, the challenge is to the order dated 19th November 2022 passed by the appellate court in Civil Miscellaneous Application No.169 of 2021 rejecting the petitioners' application for condonation of delay of 3 years, 9 months and 25 days caused in preferring the appeal against the judgment and decree dated 6th December 2017 passed in Regular Civil Suit No.7 of 2012.

2. The facts of the case are that RCS No.7 of 2012 which is a renumbered suit (original being RCS No.94 of 2000) was instituted by respondent nos.1 to 3, who were the original plaintiffs as against the

petitioners, who were the original defendant nos.3 to 7 and the other defendants seeking relief of declaration that the sale deed dated 27th September 1989 executed by one Tukaram Mote since deceased (who was father of plaintiff nos.1 and 3 and the husband of plaintiff no.2) in favour of respondent no.4 herein, who was defendant no.1 in the proceedings, is not binding on their share as the suit properties are ancestral properties. For the sake of convenience, parties are referred to by their status before the trial Court.

3. The case of the plaintiff in the plaint is that the plaintiff nos.1 and 3 are the children of deceased Tukaram and defendant no.2 Phulabai was the wife of deceased Tukaram. It is stated that Tukaram had entered into second marriage and the second wife as well as the daughter from the second marriage have expired. It is stated that defendant no.1 is the brother-in-law of the deceased daughter and defendant no.2 is the wife of defendant no.1. It is stated that defendant no.1 got executed sale deed dated 27th September 1989 from deceased Tukaram by fraud and as such the claim was made that the property being joint Hindu family property, the plaintiffs had share in the properties. The suit properties described in the plaint is Gat No.800 admeasuring 1.14-Are, pot-kharab 0.01-Are and property bearing Gat no.801 admeasuring 0.04-Are, pot- kharab 0.02-Are.

4. In the plaint, an averment was made that deceased Tukaram had executed a registered Will on 7th September 1989 in favour of the plaintiff, which defendant nos.1 and 2 in collusion with the revenue authorities have misplaced.

5. In the said case, on behalf of the present petitioners, who were defendant nos.3 to 7, written statement came to be filed and it was contended that plaintiff no.2 was the second wife of deceased Tukaram and that his first marriage had been solemnised with their mother Akkatai. It was further stated that property bearing Gat no.800 was sold to defendant no.1 by way of a registered sale-deed dated 27th September 1989 and consideration of ₹95,000 was paid. It was stated that after the sale, defendant no.1 is the owner of the property and the said property was in his possession till his death and thereafter it is in possession of his heirs. It is denied that the plaintiff has any right in the said property. As regards Gat No.801, it was stated that out of the suit property, 5-acre 5-Are land was sold to Bhopal Gadade and subsequently the same was purchased by Prabhakar Patole. The claim of plaintiff in respect of the said property was also denied.

6. By the judgment and decree dated 6th December 2017 RCS No.7

of 2012 came to be partly decreed and RCS No.64 of 2007 which was instituted by defendant no.1-Arun Patole for perpetual injunction came to be dismissed. It was declared that sale-deed executed between deceased Tukaram and deceased defendant no.1 Arun is not binding on the shares of plaintiff and that plaintiff no.1 had 2/3rd share in the property and that plaintiff no.3 had 1/6th share in the suit land and defendant nos.3 to 7 in common have 1/6th share in the suit land. The decree was directed to be sent to the district collector for effecting partition of the agricultural property.

7. As against this, defendant nos.3 to 7 herein preferred appeal before the District Court and sought condonation of delay of 3 years, 9 months and 25 days caused in preferring the appeal.

8. Heard Mr. Wable, learned counsel appearing for the petitioner. Mr. Wable would submit that the petitioner received the summons in civil miscellaneous application no.24 of 2018 preferred by the original plaintiffs and thereafter sought legal advice and tried to collect the documents and information about the proceedings. He would further submit that the petitioners were not aware about the previous proceedings in RCS No.7 of 2012 till April 2021 and, thus, there is a delay of 3 years, 9 months and 25 days caused in preferring the appeal against the impugned order. He would contend that sufficient cause

has been shown for condoning the delay.

9. Considered the submissions of learned counsel and perused the papers and proceedings with the assistance of learned counsel for the petitioner.

10. The petitioners herein were the original defendant nos. 3 to 7 in RCS No. 7 of 2012. In the said suit, they were brought on record as the legal heirs of deceased Minakshi. Therefore, it cannot be said that the petitioners were not aware about the proceedings of RCS No.7 of 2012. In fact, defendant nos.3 to 7 had filed their written statement which is annexed at page no.39 of the petition and had supported defendant no.1 who is stated to be the purchaser of property being Gat No.800.

11. In the appellate proceedings, the change appears to be for the reason that the petitioners claim to have come across a Will of deceased Tukaram in which the petitioners had been given 1/2 share in the property.

12. Considering that the petitioners were party to the proceedings which has been decreed on 6th December 2017 and is sought to be challenged in the year 2021, after the delay of 3 years, 9 months and 25 days, it will have to be seen whether there is any sufficient

explanation which is tendered for condoning the delay. Perusal of the application seeking condonation of delay discloses that the reason put forward is that it is only upon miscellaneous civil application no. 24 of 2018 being served upon them, they became aware that RCS No.7 of 2012 had been decreed in the year 2017. The application does not state the date on which the summons was served upon them in MCA No. 24 of 2018. Even assuming that the summons was served in MCA No.24 of 2012 subsequently, the fact that the petitioners were the defendants in the original proceedings cannot be lost sight of. There is no averment in the application as to why in spite of filing of the written statement, the petitioners did not keep track of the proceedings. The explanation which is sought to be tendered is that they sought information from the previous advocate when they were informed that they will have to challenge the same by way of appeal and subsequently the applicants applied for certified copies and have filed the present appeal in the year 2021. There are no details as to when the application for certified copy was made and as to when the same were received. The reason which has been put forward for condonation of delay of a considerable period of 3 years, 9 months and 25 days cannot be accepted in the absence of any details put on record. The application is bereft of any details and as such the impugned order rejecting the application cannot be faulted with.

13. It is not expected that each and every day's delay should be explained. However, there should be sufficient grounds made out in the application seeking condonation of delay. In the present case, the application appears to be filed as a matter of course without giving any details and general averments are made therein that the petitioners became aware in the year 2018 upon service of summons of MCA No. 24 of 2018. As the petitioners were party defendants, it is expected that the petitioners would be diligent and keep themselves informed about the status of proceedings. However, from the perusal of their application it appears that the petitioners themselves are at fault for failing to keep in touch with their advocate and be informed about the proceedings. As such the provisions of section 5 of the Limitation Act, 1963 cannot come to the aid of negligent litigant. The delay of 3 years, 9 months and 25 days is considerable and there is no explanation muchless sufficient cause shown for condonation of delay.

14. In view of the above, no cause for interference under Article 227 of the Constitution of India is shown. The petition fails and is hereby dismissed.

[Sharmila U. Deshmukh, J.]