

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 7175 OF 2023**

Ghanshyam Laxmanseth Alshi

...Petitioner

Versus

Pratibha Ramgopal Alshi (deceased)

through legal heirs and ors.

...Respondents

.....

Mr. Rushabh Sheth a/w Mr. Shashank Mishra i/b Mr. Shashank Mishra for the Petitioner.

Mr. Vijay Killedar a/w Mr. Sumedh Modak for Respondent Nos. 1 & 2.

Mr. George Thomas i/b Mr. Kishor Alshi for the Respondent No. 4.1, 4.5 & 4.6.

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CORAM : N.R. BORKAR, J.

DATED : 15 JUNE 2023

P.C. :-

The respondent herein had filed a suit for partition and separate possession against the petitioner. The trial Court decreed the suit by ex-parte Judgment and decree dated 7 November 2008.

2. The petitioner after coming to know about the said decree, filed an application under Order 9 Rule 13 of the Code of Civil Procedure to set aside the said decree alongwith an application for condonation of delay as there was delay in filing the said application.

3. By the order impugned, the learned trial Court rejected the application filed by the petitioner for condonation of delay.

4. There is no dispute that after service of suit summons, the petitioner had appeared before the trial Court through his Advocate. According to the petitioner, his Advocate told him not to come to the Court on every date and assured him that he would inform him, if his presence was needed. According to the petitioner, he believed his Advocate and stopped attending the dates before the trial Court. According to the petitioner, he came to know about the decree on 22 October 2013, when he received the notice in execution proceedings.

5. I have heard the learned counsel for the petitioner and the learned counsel for the contesting respondents.

6. The learned counsel for the petitioner submits that the petitioner can not be made to suffer just because he believed the words of his Advocate. It is submitted that considering the facts and circumstances the trial Court ought to have condoned the delay. In support of the submission, the learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court ***Manoharan V/s. Sivarajan*** reported in **LEX (SC) 2013 1121**.

7. On the other hand, the learned counsel for the respondent supported the order impugned.

8. I have perused the order impugned. Admittedly, after service of suit summons in the year 2001, the petitioner had attended few dates before the trial Court. Even if, it is assumed that his Advocate told him not come

to the Court on every date, however, the decree was not passed immediately thereafter and the suit was pending for almost seven years and ultimately decree came to be passed in the year 2008. It is not the case of the petitioner that during this period of seven years, he had made any enquiry with his Advocate.

9. Admittedly, the petitioner had filed the application under Order 9 Rule 13 of the Civil Procedure Code in the year 2013 after receipt of notice in execution proceeding. It is thus, apparent that the petitioner for about 12 years had not taken any steps to inquire from his Advocate about the status of the suit. Considering the overall facts and circumstances of the case, the trial Court was justified in rejecting the application for condonation of delay. No interference is thus called for in the impugned order. The Petition is dismissed.

(N.R. BORKAR, J.)