



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7577 OF 2022

Balaji Sayanna Yajja

...Petitioner

Versus

Shrimati Shashikala Laxminarayan
Gadi & Ors.

...Respondents

Mr. Kishor Patil i/b Mr. Nilesh Wable, for the Petitioner.

Mr. A. B. Tajane i/b Ms Kavita P. Shinde, for the Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 04th AUGUST, 2023.

P.C.:

. Heard.

2. The challenge in the petition is to the order dated 08th April, 2022 rejecting the Petitioner's application for condonation of delay in filing application to set aside the order dated 04th August, 2007 by which the First Appeal No. 570 of 2004 and Civil Application No. 1612 of 2004 were dismissed by this Court.

3. The facts of the case are that the Petitioner is the original

plaintiff in Special Civil Suit No. 294 of 1988, instituted seeking specific performance of agreement for sale in respect of property being House No. 129 situated in CTS No. 9567 at Solapur. The case of the plaintiff was that the Respondents who are the original owners of the property entered into an agreement for sale of the suit property on 5th December, 1985 for a total consideration of Rs.3,09,000/- pursuant to which an amount of Rs.1,80,000/- was deposited. On 3rd October, 1988, Special Civil Suit No. 294 of 1988 was instituted, which came to be decreed by the trial Court by judgment and decree dated 05th December, 2002, which reads thus:

ORDER

The suit stands decreed with costs.

Defendant Nos. 1 to 6 are directed to execute registered sale-deed of the suit property in favour of plaintiff on accepting balance consideration of Rs.02,39,000/- (Rs. Two lakh thirty nine thousand only) minus costs of the suit; within a month from date of order; failure to this, the plaintiff may seek redress through Court.

Similarly, plaintiff is directed to deposit the balance consideration of Rs.02,39,000/- (Rs. Two lakh thirty nine thousand only) in the Court within a month from today; failure to this, the suit stands dismissed.

The suit for the relief of perpetual injunction is decreed to the extent of a room in the suit property which is delivered to him by virtue of an agreement for sale Exh.23 and defendants are or their representatives are hereby enjoined from causing obstructions to plaintiff's enjoyment over the same in perpetuity.

The decree be drawn-up accordingly.

4. First Appeal No. 570 of 2004 was filed by the Petitioner being partly aggrieved by the direction passed by the trial Court to pay the balance consideration of Rs.2,39,000/- as according to the Plaintiff he had paid a sum of Rs.1,80,000/- whereas the trial Court had held that only a sum of Rs.70,000/- was paid. By order dated 16th September, 2004, this Court directed the Petitioner to deposit a sum of Rs.2,39,000/- within the said period regarding which reference was made in earlier order dated 16th June, 2004 to the effect that the appellant had shown ready and willingness to deposit the amount without prejudice to the rights and contentions of the parties. On 04th August, 2007, a common order came to be passed by this Court in a group of 100 petitions relating to unserved notices in which conditional order of dismissal was passed in the event steps are not taken for serving the notices. As no steps were taken, in view of the conditional order passed, the First Appeal No. 570 of 2004 came to be dismissed.

5. On 06th May, 2014 after a delay of about 6 years and 276 days, Civil Application No. 2155 of 2014 was instituted by the Petitioner

for restoration of the First Appeal and for setting aside the conditional order dated 4th August, 2007. The grounds which were taken in the said application was that the mother of Petitioner had developed gangrene and was bedridden since 2003 and ultimately expired on 7th February, 2006. It was contended that the father of the Petitioner was suffering from illness due to old age and expired on 18th June, 2012. The date of knowledge was attributed on 02nd May, 2014 when he approached his Advocate to inquire about the First Appeal.

6. During the pendency of the civil application seeking restoration due to enhancement of the pecuniary jurisdiction, the First Appeal filed by the Petitioner was transferred to the District Court at Solapur and was numbered as Miscellaneous Civil Application No. 104 of 2016. On 23rd September, 2016, the Petitioner deposited the amount of Rs.2,39,000/- as directed by this Court vide order dated 16th September, 2004. On 16th August, 2014, the Respondents filed their Miscellaneous Application No. 333 of 2014 seeking cancellation of the sale deed and restoration of the possession which is pending. The application for stay of the impugned judgment and order and stay of the proceedings in Miscellaneous Civil Application No. 333 of 2014 was stayed by the

District Court on 23rd September, 2016. By the impugned order dated 8th April, 2022, the District Judge dismissed the Miscellaneous Civil Application No. 104 of 2016 filed by the Petitioner giving rise to the present petition.

7. Mr. Patil, learned Counsel appearing for the Petitioner has taken this Court through the proceedings of the matter and would contend that the only ground on which the appeal was filed, was as regards the amount which was as per the Petitioner was incorrectly adjudicated. He would further submit that the judgment was in fact accepted by the Respondents as no appeal was filed by the Respondents. He would further contend that the common order was passed on 4th August, 2007 about which the Petitioner had no notice, which resulted in the dismissal of his first appeal. He would further contend that in the application seeking restoration of the appeal sufficient explanation was tendered as regards ailment of his parent which was proved by the witnesses, who were examined in support of his case. He would further submit that his bonafide had been proved as he has already deposited the sum of Rs.2,39,000/- as directed by this Court. He would further submit that a fair chance ought to be given to the Petitioner to contest the appeal on merits and the issue of condonation of delay ought to be dealt with

in a lenient manner. He draws support from the decision of the Apex Court in the case of *N. Balakrishnan V/s. M. Krishnamurthy*¹ and in the case of *Ummer V/s. Pottengal Subida & Ors.*² .

8. *Per contra*, Mr. Tajane, learned Counsel appearing for the Respondents submits that the delay of 6 years and 276 days has resulted in a valuable right accruing to the Respondents. He would further submit that the Respondents have already preferred a Miscellaneous Civil Application No. 333 of 2014 for cancellation of sale deed and restoration of possession in the year 2014 itself. He would further contend that in spite of the judgment and decree, the plaintiff failed to deposit the balance consideration of Rs.2,39,000/- and the conduct of plaintiff disentitles him from seeking any indulgence of this Court in exercise of the powers under Article 227 of the Constitution of India.

9. Mr. Tajane relies upon decision of this Court dated 28th July, 2021 passed in Writ Petition No.13265 of 2019 where this Court held that the conduct of the Petitioner therein deserves no consideration.

1 (1998) 7 SCC 123

2 (2018) 15 SCC 127

10. Considered the submissions and perused the material with the assistance of learned Counsel for the parties.

11. The facts which are narrated above are not in dispute and the only issue which is required to be considered is whether the delay of 6 years and 276 days ought to be condoned in the present case. It is also necessary to take into consideration the conduct of the Petitioner in not complying with various orders passed by the Trial Court as well as this Court. By the judgment and decree dated 5th December, 2002 passed in the suit of 1988 a direction was given to the plaintiff to deposit the balance consideration of Rs.2,39,000/- within a month from the date of the decree i.e. on or before 5th January, 2003 failing which the suit stood dismissed. The amount as directed was not deposited on or before 5th January, 2003 and as a consequence the suit stood dismissed. The decree being a decree for specific performance of the registered sale deed it was expected from the Petitioner that an application will be filed seeking extension of the time for deposit which has not been done in the present case. The defence being that the Petitioner had filed First Appeal No. 570 of 2004 before this Court. There is no order produced on record to show that there was stay granted by this

Court in First Appeal No 570 of 2004 to the judgment and decree dated 5th December, 2002.

12. Be that as it may. By order dated 16th September, 2004 this Court directed the Petitioner to deposit the amount of Rs 2,39,000/ within period referred to in earlier order dated 16th June, 2004. Admittedly the order was not complied with by the Petitioner within the period prescribed as it is only in the year 2016, that the amount was deposited. In fact the District Court in view that the order of deposit by this Court was passed in the year 2004 ought not to have permitted the Petitioner to deposit the amount after a period of almost twelve years.

13. In the year 2007 a conditional order was passed by this Court as regards the unserved notices. As pointed out by learned counsel for Respondents, on 17th June, 2005 this Court had granted 2 weeks time to the Petitioner to supply the particulars and thereupon notices were issued which were made returnable after four weeks. After two years the matter was listed under the caption of “unserved notice” and conditional order came to be passed. No steps were taken by the Petitioner within the period of two years. As a result of non-compliance of even this order, the first appeal

came to be dismissed in the year 2007. For a period of almost seven years nothing was done by the Petitioner and the application for restoration of the appeal came to be filed on 06th May, 2014 on the grounds which were mentioned therein. The Appellate Court while deciding the application for condonation of delay has taken into consideration the evidence which has been produced by the Petitioner, in support his case of ailments of his parents. In that respect, on analysis of the evidence of the witnesses, the Appellate Court has noted that as far as the Petitioner's father was concerned, the evidence which has come on record was that the Petitioner's father was admitted to the nursing home for a period of four days from 31st March, 2007 till 04th April, 2007 and as regards the fracture of neck femur on the right side, the Petitioner's father was admitted for a period of four days only.

14. Analysis of the evidence shows that for some period during the period in 2007 and subsequently, in the month of January, 2009 there was hospitalization of the parent. What is required to be shown is that from the year 2007 to 2014 the reason why the Petitioner was precluded from taking appropriate steps for setting aside the order of the dismissal. The Petitioner sought to place the blame on the Advocate appearing in the First Appeal to contend

that it was only 2nd May, 2014 that the Petitioner acquired knowledge about the dismissal order. The Appellate Court observed that the notice had been issued to the concerned Advocate, who has filed an Affidavit stating that he had informed the order of dismissal passed by this Court to the Petitioner as well as the Advocate appearing in the Trial Court. There is no reason to doubt the statement of the Advocate. As such the date of acquiring knowledge in the year 2014 is itself doubtful. In any event, it is the duty of the litigant to follow up with his Advocate and there is no pleading that the Petitioner was in contact with his Advocate as regards the appeal and as such now cannot blame his Advocate. The judgment and decree dated 5th December, 2002 injuncts the Respondents from interfering with the possession of one room in the suit property which is delivered to him by virtue of the agreement for sale. The Trial Court records that during the cross examination, the Petitioner has admitted that he is in possession of entire suit property and he does not possess any documentary evidence to show that the owner of the suit property had given possession of remaining suit property to him. Without payment of the balance consideration, the Petitioner appears to have illegally taken possession of the entire suit property and is enjoying the same

since last several years.

15. The question is against the background of such conduct, the delay of 6 years and 276 days is required to be condoned. No doubt that each and every day of delay is not required to be accounted for, however, the explanation which is to be tendered in support of the application for condonation of delay should be sufficient enough for the Court to come to a conclusion that the Petitioner has not been negligent and for reasons which would suffice the period for which delay has occurred.

16. In the present case, in the evidence recorded during the cross-examination the Petitioner had deposed that there are five firms owned by his family and during the period the business of all five firms was going on. It has also come on record that during this period the Petitioner was constantly pursuing the proceeding before the revenue authority about the same dispute and he had contested it upto the Court of Deputy Director, Land Record, Pune. In the face of such evidence which has been come on record, the Appellate Court has rightly rejected the application.

17. The conduct of the Petitioner in not complying with the

prescribed time the orders of the Court as regards the payment of the balance consideration coupled with the absence of evidence to justify the delay and the conduct in usurping the entire suit property whilst the injunction was only in respect of one room in the suit property, in my view, does not deserve a lenient view to be taken. The law comes to the aid of a litigant, who is diligent in pursuing his remedy and under the guise of interest of justice, the Court cannot be unmindful of the fact that the justice to one side should not result in injustice to the other side.

18. The decisions which have been relied upon by learned Counsel for the Petitioner is unexceptionable. However the same are rendered in the facts of the individual cases. The rigours of Limitation Act though harsh cannot be given a go-by on the basis of liberal approach and have to be applied considering the facts and circumstances of each case. The Respondents have already initiated proceedings in the year 2016 for rescinding the agreement for sale. As indicated above, in the facts and circumstances of the instant case, in my view, the Petitioner does not deserve any relief. The petition fails and stands dismissed.

19. At the stage, a request is made for continuation of the interim relief granted on 06th July, 2022 for a further period of four weeks. Learned Counsel appearing for the Respondents objects the grant of interim relief, contending that the interim relief is running in favour of the Petitioner since the year 2022. The order is stayed for a further period of four weeks from the date of uploading of this order.

(SHARMILA U. DESHMUKH J.)