

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6541 OF 2017

Suman Prabhakar Salunkhe

.. Petitioner

Versus

Urmila Prabhakar Salunkhe

.. Respondent

-
- Mr. Dilip Bodake, Advocate for Petitioner.
 - Ms. Mili V. Thakkar a/w. S.V. Thakkar, Advocate for Respondent.
-

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 02, 2023.

P.C.:

1. Heard Mr. Bodake, learned Advocate appearing for Petitioner and Ms. Thakkar, learned Advocate appearing for Respondent at length.

2. The order impugned in the present Writ Petition dated 21.03.2016 has been passed by the learned District Judge-1, Karad (for short “**Trial Court**”) condoning the delay caused in preferring the Appeal by Respondent against the Judgment and decree dated 25.01.2001 passed by the learned Joint Civil Judge Junior Division, Karad in Regular Civil Suit No.510 of 1999.

3. Without going into the factual aspects of the issue raised by both parties, who claim to be wives of deceased Prabhakar Salunkhe, the issue before me is limited to the aspect of condonation of delay.

4. I have perused the record and pleadings of the case. Admittedly, the decree dated 25.01.2001 is an *ex-parte* decree. It is the Respondent's case that she came to know about passing of the decree on 13.02.2012 for the first time when a copy of the same was annexed to the Notice of Motion in Suit No.3034 of 2000. She contended that the summons in the said suit was not served by the Plaintiff on her. The learned Trial Court while passing the impugned order has perused the original record. It is seen that the alleged registered A.D. packet was addressed at 'Kalamboli, K.L./5, Block No.4, Ground Floor, Sector 3-E, Kalamboli, New Mumbai'. That apart, there is remark appearing in pen on the said envelope which reads "not CI". While passing the *ex-parte* decree, the learned Trial Court observed that the notice was duly served on Defendant with the summons and she failed to appear and therefore proceeded to decide the suit *ex-parte*. However, it was Respondent's case that her correct address at the relevant time was materially different and which read as 'KL/5, Building No.6, Flat No.4, Sector No.3-E, Kalamboli, New Mumbai'. She submitted that there are more than 100 buildings in Sector 3-E and without the number of the building having been mentioned, it was highly improbable that the packet of service of summons could be delivered to her at her correct address. The Postman admittedly who delivered the summons was not examined. That apart, Respondent had also contended that due to a serious

ailment i.e. heart attack suffered by her son in the year 2000 – 2001, she was occupied with his treatment and that also led to the delay. It was contended that the envelope of service was wrongfully addressed to one Urmila Sham Thakur whereas the maiden name of Applicant was Urmila Khimji Akkai Thakkar and after marriage her name was Urmila Prabhakar Salunkhe.

5. Admittedly, a declaratory suit being Suit No.3034 of 2000 is pending before the Bombay City Civil Court which has been filed by Respondent.

6. The learned Trial Court after considering the submissions of both the parties has given a reasoned order. The findings given in paragraph Nos.13 to 15 of the impugned order are reproduced below for convenience:-

“13. From the judgment and decree of the trial court in R.C.S. No.510/1999, it appears that the suit filed by the respondent was decreed ex parte and it was declared that respondent is legally wedded wife of deceased Prabhakar Salunkhe. Applicant has come with a contention that she was not served with suit summons in the said suit. It is the case of the applicant that there are about 100 buildings in Sector 3E and without the number of the building being mentioned, it is improbable that the packet could be delivered at her correct address. It appears that respondent had not examined the concerned Postman regarding the factum of the notice being not claimed by the applicant. It is further case of the applicant that she begot a son on 4/2/1972 out of wedlock with deceased Prabhakar. Applicant is relying upon various documents to substantiate her contentions in the delay condonation application.

14. It is also the contention of the applicant that she had filed Suit No. 3034/2000 in the Hon'ble High Court, Bombay for a declaration that she is legally wedded wife of deceased Prabhakar Salunkhe. According to the applicant she had taken

out notice of Motion No.2247 of 2000 in that suit for injunction and the same was made absolute as per order dated 23/4/2001. Further according to the applicant, she came to know about ex parte judgment and decree on 13/2/2012 when respondent annexed the copy of the said Judgment with notice of Motion No. 3784 of 2011 in Suit No. 3034 of 2000 and thereafter she immediately filed the present application.

15. It is well settled the court should adopt a liberal approach while considering application or condonation of delay under Section 5 of the Limitation Act and too pedantic a view should not be taken. There is no presumption that the delay caused by parties in taking up the proceedings is intentional or deliberate. It is also well settled that the term sufficient cause as occurring in Section 5 must be given a liberal construction so as to advance the cause of substantial justice. It appears that the applicant had filed Suit No.3034/2000 before the Hon'ble High Court in respect of her status as wife of deceased Prabhakar Salunkhe. Having regard to the facts and circumstances of the case and the rival contentions made by the parties, applicant has made out a sufficient cause for condonation of delay caused in preferring the appeal. As such, the application for condonation of delay needs to be allowed by imposing suitable costs on the applicant. Hence, the following order.

ORDER

1. Delay Application No.24/2012 is allowed subject to the applicant paying to the respondent costs of Rs.2500/- (Rs. two thousand Five hundred only) within two weeks from today.
2. On payment of aforesaid amount of costs, the appeal be registered."

7. Considering the guidelines laid down by the Supreme Court in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors.***¹ on the basis of the law laid down prior to the said decision and guidelines given in paragraph Nos.21.4 to 21.10 and paragraph Nos.22.1 to 22.4 of the said decision, in the facts of the present case justice needs to be done and a liberal approach needs to be taken. This is so because in the present case Respondent had learnt for the first time about the passing of the ex-

¹ (2013) 12 SCC 649

parte judgment and decree only in the year 2012 when Respondent had annexed a copy of the said judgment in the suit proceedings which were filed by the Respondent.

8. I therefore see no reason to interfere with the findings returned by the learned Trial Court in allowing the Application with costs. The impugned order does not call for any interference whatsoever and is sustained.

9. Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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AJAY TRAMBAK
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Date: 2023.01.06
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