

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAO) NO.136/2022
IN
MISC. CIVIL APPLICATION (REVIEW) ST. NO.1150/2022
IN
SECOND APPEAL NO.53/2013 (D)

Dilip s/o Moreshwar Wasamwar

Vs.

Amarsingh s/o Gurudipsingh (dead) thr. LR's Manusingh s/o Amarsingh and others

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri A.K. Waghmare, Advocate for appellant
 Shri S.M. Puranik, Advocate for respondent Nos.1(a)& (b)
 Shri A.A. Naik, Advocate for respondent Nos.3A to 3I
 Shri Sandhan Nagrale, Advocate h/f Shri S.S. Dhengale,
 Advocate for respondent Nos.5(1), 5(2), 5(4)
 Shri N.G. Salao, Advocate for respondent No.6(b)

CORAM : SMT. M.S. JAWALKAR, J.
DATED : 13/09/2023

The present application is filed for condonation of delay in filing Misc. Civil Application St. No.1150/2022 in Second Appeal No.53/2013 decided on 13/06/2016.

2. It is submitted that applicant has filed a suit as an indigent person. It is further submitted that the impugned final order passed by this Court was not informed by the concerned person who was dealing with the matter in this Court. It is further submitted that the Counsel for the appellant has also not informed the Review Applicant about the final disposal of the matter. It is further contended that whenever, applicant had asked about matter,

concerned person used to say that matter is still pending.

3. It is his contention that he was suffering from BMC. HTC Hepatitis anemia from 21/01/2018 to 19/05/2018. He thereafter suffered from Lt. Calcaneus Fracture on 09/08/2018 and he was advised to take bed rest. He came to know about dismissal of Second Appeal in first week of May, 2019 and thereafter contacted the Counsel at the Hon'ble Apex Court.

4. It is informed by learned Counsel that the S.L.P. was filed in the months of July 2019 along with application for condonation of delay. The S.L.P. (C) Diary No.30060/2019 dismissed on 29/10/2021 as there was no sufficient cause for condonation of delay and matter was not heard on merit.

5. The learned Counsel relied on **(2000) 6 S.C.C. 359 (Kunhayammed, and others Vrs. State of Kerala and another)** and submitted that if the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the Court, tribunal or

authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as *re judicata* in subsequent proceedings between the parties.

6. It is submitted that as there is no order refusing the S.L.P. thereby refusal to converting into an appeal, the High Court was jurisdiction to entertain a review petition.

7. As against this submission, the learned Counsel for respondent drawn my attention to the medical certificate issued wherein name of applicant is appearing as Laxman whereas petition is filed by name Dilip Wasamwar. It is further submitted that even if, it is presumed that Dilip and Laxman is the one and the same person, this certificate is of no avail to the petitioner as impugned order came to be passed on 13/06/2016 and application for condonation of delay in S.L.P. came to be disposed of on 29/10/2021 which shows that the Hon'ble Apex Court duly considered the medical certificate. Review Application filed on 17/01/2022 after rejection by the Hon'ble Apex Court. There is no explanation for that period also.

8. I have heard both the parties at length. Perused the order passed by the Hon'ble Supreme Court. The judgment was passed on 13/06/2016 and Second Appeal came to be dismissed. It appears that the applicant is blaming to some person whose name is not disclosed and referred in the application as concerned person has not informed to the applicant about disposal of Second Appeal.

9. It is his further contention that he was suffering from BMC HTC Hepatitis anemia from 21/01/2018 to 19/05/2018. He was suffering from Lt. Calcaneus Fracture on 09/08/2018. It is his contention that he recovered in May, 2019 and made detailed enquiry. Thereafter, he came to know about dismissal of his Second Appeal for the first time in the first week of May 2019. Thereafter, he contacted his Counsel at the Hon'ble Apex Court and S.L.P. (C) Diary No.30060/2019 came to be filed. The same was dismissed. The order dated 20/10/2021 of the Hon'ble Apex Court reads as under:

“ There is an inordinate delay of 1065 days in filing the Special Leave Petition and we are not satisfied with the explanation tendered.

Accordingly, the Special Leave Petition is dismissed on the ground of delay.

Pending applications(s), if any, shall stand disposed of.”

10. The Review Application is filed on 17/01/2022. There is no explanation for this period

also. There is no dispute over the preposition laid down in ***Kunhayammed, and others (supra)***. However, in view of the order of the Hon'ble Apex Court, it is confirmed that the Court is not satisfied with the explanation tendered.

11. This Court on the same explanation cannot condone the delay. As held in ***Kunhayammed, and others (supra)***, “*whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the Court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country*”.

12. As such, the application is liable to be dismissed as no merits and sufficient cause to condone the delay. Accordingly, the application is rejected.

JUDGE

R.S. Sahare