

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

...
SECOND APPEAL NO. 263/2018

Shri Sanjay s/o Madhaorao Dhone

..Appellant

versus

Shri Vinayak s/o Nagorao Khedikar

..Respondent

.....
Mr. V.U.Waghmare, Advocate for the appellant

Mr. A.B.Raje, Advocate for the respondent
.....

CORAM: ANIL L. PANSARE, J.

DATE OF CLOSING: 18.07.2023.

DATE OF PRONOUNCEMENT: 31.07.2023.

PC:

Heard the learned counsel for the respective parties, at length.

2. The appellant/original defendant has challenged the order dated 05.04.2018 passed by learned District Judge-13, Nagpur in Miscellaneous Civil Application No.52/2014.

3. It appears that the appellant had filed an application under section 5 of the Limitation Act for condonation of delay of 1014 days in filing Appeal against the judgment and decree dated 25.01.2011 passed by the learned Joint Civil Judge, Sr.Dn., Nagpur in Special Civil Suit No. 774/2007. The first appellate Court has rejected the application.

4. The notice had been issued on the following substantial question of law :-

“Whether the appellate Court is justified in refusing to condone delay of 1014 days in filing the appeal.”

5. Mr.U.V. Waghmare, the learned counsel for the appellant contends that the evidence led before the first appellate Court in support of justification for the delay, has not been properly appreciated. *Au contraire*, Mr.A.B.Raje, the learned counsel for the respondent has supported the order passed by the first Appellate Court.

6. I have gone through the impugned order. The following were the reasons put forth by the appellant to justify the delay :-

- (i) He has not received any suit summons;
- (ii) He had not engaged any Advocate in the suit;
- (iii) He got the knowledge of judgment and decree in the month of September 2013 when he received notice from *Patwari*;
- (iv) Immediately thereafter, on 06.09.2013, he applied for certified copy of the sale deed, which is received on 09.10.2017;
- (v) Thereafter, he engaged Advocate and applied for certified copy of all the documents filed in Special Civil Suit which were received on 20.11.2013;
- (vi) After receipt of the said documents, he got knowledge that suit summons was received by his nephew who never intimated him;
- (vii) It is also revealed that the plaintiff/non-applicant fraudulently obtained decree on the basis of forged agreement to sell.

(viii) The plaintiff/non-applicant might have engaged other Advocate by making forged signature of the applicant on *vakalatnama*.

7. The appellant had led evidence in support of his application. In the chief-examination, he reiterated the aforesaid grounds but in the cross-examination he has been exposed completely.

8. So far as the first ground is concerned, the first appellate Court has noted that the suit summons (Exh.9) was received by one Vivek Dhone, who admittedly is a nephew of the appellant. The first appellate Court has also noted that the appellant had, in fact, engaged two Advocates namely, Yogesh Shukla and M.Y. Shukla, vide *vakalatnama* (Exh.11). The appellant made a bold allegation that he had not engaged these two Advocates. He went on to add that the respondent/non-applicant might have engaged these Advocates by putting his forged signature on the *vakalatnama*.

9. In the cross-examination, it is elicited that his nephew- Vivek Dhone, who accepted the summons told him (the appellant) of receiving summons but after 7/8 days of the date fixed by the Courts. On the engagement of Advocate, the appellant admitted that he had engaged the said two Advocates and instructed them to conduct the case. He has also admitted his signature on *vakalatnama*. The first appellate Court has, therefore, held, and rightly so, that these admissions would clearly establish that the appellant was well aware of service of summons.

10. The first appellate Court has then noted that the appellant had filed his registered address (Exh.10) with his signature and filed an

application seeking time to file written statement. He has also filed an application for issuance of directions to supply documents. His Advocate has received documents on 30.10.2007.

11. Considering the above evidence, the first appellate Court has held that the appellant has lodged the application on the false grounds that he has not received suit summons; has not engaged an Advocate and that he had no knowledge of the suit till he received notice from *Patwari*. The first appellate Court then noted that the judgment and decree was passed by the trial Court on 25.01.2011. The limitation therefore commenced from the said date. Thus, there is an enormous delay of 1014 days in filing the appeal.

12. The first appellate Court then referred to the judgment in the case of **Basawraj & another vs. Special Land Acquisition Officer**, reported in **(2013) Vol.14 SCC 81**, wherein the Apex Court has by referring to a plethora of judgments, as regards what constitutes 'sufficient cause', has summarized the law in Paragraph 15 as under :-

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only with the parameters laid down by this court in regard to the condonation of delay. In case there was no

sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature.”

13. The first appellate Court has rightly noted that the law laid down by the Apex Court is squarely applicable to the present case. The party here i.e. the present appellant, is not only negligent and lacking *bona fides* but, has put forth a false plea and, therefore, application came to be rejected.

14. I do not find any error of law in the impugned order. The inference drawn by the first appellate Court is well-founded, inasmuch the same is based on the evidence adduced before it and is a well-reasoned inference. The first appellate Court is therefore fully justified in refusing to condone the delay of 1014 days in filing the first Appeal. The substantial question of law is answered accordingly.

15. In the result, there is no merit whatsoever in the Appeal. The same is dismissed. No costs.

[ANIL L. PANSARE, J.]

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