



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 55 OF 2020

1. Savita w/o. Deelip Sirsath ... **APPLICANT/PETITIONER**
(Ori. Defendant)

VERSUS

1. Krushnanad s/o. Namdeo Sirsath,
2. Smt. Ashabai w/o. Kashinath Sirsath,
3. Vinod s/o. Kashinath Sirsath ... **RESPONDENTS**
(Ori. Plaintiffs)

...
Mr. P.F. Patni – Advocate for Applicant
Mr. Shaikh Tarek Mobin H. - Advocate for Respondents
....

CORAM : SANDIPKUMAR C. MORE, J.
DATE : 27th August, 2024

ORDER :

1. The applicant who is original defendant in Special Civil Suit No. 203 of 2019 has challenged the order passed below Exhibit–15 in the said suit on 28.01.2020 by the learned Joint Civil Judge, Senior Division, Aurangabad (*hereinafter referred to as “the learned Trial Court”*). Under the impugned order the learned Trial Court has rejected the application (Exhibit–15) filed by applicant/defendant for rejection of plaint under Order VII Rule 11 (d) of Civil Procedure Code.

2. The respondents/plaintiffs has filed the aforesaid civil suit for cancellation of sale–deed dated 26.11.2014 executed in favour of present

applicant/defendant in respect of 80 R land out of land Gat No. 88. The plaintiffs had filed separate application for condonation of delay bearing M.A.R.J.I. No. 124 of 2018 for condoning the delay of two months and five days. The learned Trial Court vide order dated 24.07.2019 had condoned the delay and thereafter the aforesaid suit was registered. Thereafter the applicant filed application (Exhibit-15) for rejection of plaint which the learned Trial Court under the impugned order has rejected. Hence, this Civil Revision Application.

3. Learned Counsel for applicant submits that, the impugned order is abuse of process of law as even admitting that, Section 5 of the Limitation Act under which the delay is expected to be condoned is not applicable to the suit, the learned Trial Court firstly made an error by condoning the delay and thereafter the same Judge admitting her mistake rejected the application (Exhibit-15) for rejection of the plaint by observing that, the order of delay condonation passed in M.A.R.J.I. No. 124 of 2018 would come in her way for rejecting the plaint. He placed reliance on the following judgment :

- (a) Hon'ble Apex Court in the case of **F. Liansanga and Another Vs. Union of India and Others** reported in (2022) 1 Apex Court Judgments(SC) 414.

4. On the contrary, learned Counsel for the respondents/plaintiffs opposed the submissions made by the learned Counsel for applicant and

supported the impugned order. According to him, an issue of limitation being a mixed question of law and facts can only be decided after conducting the trial and for that purpose plaint cannot be rejected. He also relied on the following judgments :

(a) Hon'ble Apex Court in the case of **Chhotanben and Another Vs. Kiritbhai Jalkrushnabhai Thakkar and Others** reported in *Civil Appeal No. 3500 of 2018* decided on 10.04.2018.

(b) This Court Bench at Bombay in the case of **K. S. Dhondy Vs. Her Majesty The Queen of Netherlands** in *Appeal No. 493 of 2012 in Notice of Motion No. 2651 of 2004 in Suit No. 2175 of 1994* decided on 27.02.2013.

5. Heard learned Counsel for the rival parties and also perused the documents on record alongwith impugned order.

6. Admittedly, the limitation aspect is a mixed question of law and facts, but in the instant matter it is extremely important to note that, the respondents/plaintiffs had in fact filed delay condonation application alongwith the suit being M.A.R.J.I. No. 124 of 2018 and prayed for condonation of delay of two months and five days in filing the suit for cancellation of the sale-deed mentioned therein. However, Section 5 of the Limitation Act, 1963, is not at all applicable to the suits but only to appeals and to applications except for applications under Order XXI of

Civil Procedure Code. The Hon'ble Apex Court in the case of **F. Liansanga and Another** (*supra*) has clearly upheld the verdict of Gauhati High Court wherein it is held that, Section 5 of the Limitation Act, 1963 not at all applies to the suits. Thus, there is no provision in the law for condonation of delay in respect of civil suits. It is extremely important to note that, the learned Trial Court had committed an error by entertaining such application for condonation of delay in respect of the suit of the respondents/plaintiffs and by passing order in favour of them. Further, even after knowing the said fact that Section 5 of the Limitation Act does not apply to the suits, the learned Trial Court refused to reject the plaint being barred by limitation.

7. It is further important to note that, both these orders namely the order of condoning the delay in the suit and the order of rejecting the application for rejection of plaint have been passed by the same Judge. It is to be noted here that, by act of condoning the delay in suit, it has been principally admitted by the learned Trial Court that, the suit was barred by limitation. However, reason given for it by the same learned Trial Court is that while passing order of delay condonation no record of the civil suit was before the Court. Therefore, the order of rejecting the application for rejection of plaint appears to be sheer abuse of process of law on the part of the learned Trial Court. At first the learned Trial Court

should not have allowed the delay condonation application in the suit and secondly as soon as it got knowledge that Section 5 of the Limitation Act is not applicable to the suit, the learned Trial Court should have rejected the plaint at once. Thus, the impugned order is definitely erroneous on the face of it and it stands quashed and set aside. Resultantly, the application (Exhibit-15) is allowed and the plaint in Special Civil Suit No. 203 of 2019 stands rejected.

8. The Civil Revision Application is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE