



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

920 SECOND APPEAL NO. 383 OF 2023

Gayitribai Vidyadhan Krushnapure

....Appellant

VERSUS

Ashok Govindrao Parge

.....Respondent

.....

Mr. G. D. Kale, Advocate for Appellant

Mr. A. N. Sabnis, Advocate for respondent No. 1.

Mr. A. A. Bhosale, Advocate for respondents No. 3 and 4.

CORAM : R. M. JOSHI, J.

DATE : 7th FEBRUARY, 2024.

PER COURT :

1. This second appeal takes exception to the order dated 21st March, 2023 passed in Civil Misc. Application No. 1/2021 seeking condonation of delay of 1 year 10 months in preferring appeal against the judgment and decree dated 8th January, 2019 passed in Regular Civil Suit No. 373/2012.

2. Appellant is original defendant No. 3. In the application filed before the First Appellate Court, it is the contention of appellant that owing to Covid 19 Pandemic situation, there were restrictions for movement of people and for that reason appeal could not be filed. It is also stated that as per the order of Hon'ble Apex Court, period from

22nd March, 2020 to February, 2022, was excluded from the period of limitation and excluding the said period delay is of 10 months only. It is also stated that appellant is an illiterate old lady and that on account of her age she used to remain frequently ill and therefore, appeal could not be filed in time. It is also claimed that the advocate appearing on her behalf before the Trial Court did not inform her about the decision of the Trial Court. On these reasons, delay is sought to be condoned.

3. Contesting respondent/original plaintiff opposed the said application. Appellant did not lead any evidence to substantiate her contentions however, respondent No. 1 i.e. original plaintiff led evidence in order to bring it on record that the claim of appellant is false as she had been attending different proceedings during the relevant time before different Courts/Authority.

4. Learned counsel for appellant submits that the Court should be liberal in condonation of delay and since the rights of the appellants are involved in the ancestral property, it is a fit case for condonation of delay, may be by imposing some cost. It is his submission that the appellant is old aged lady and owing to her ill

health she could not prefer the appeal in time. He also argued that the advocate appearing on her behalf before the Trial Court did not intimate her about the decision of the Trial Court.

5. Learned counsel for respondent/original plaintiff opposed the said contention by drawing attention of the Court to the evidence placed on record before the First Appellate Court indicating appearance of appellant in person before Civil Court as well as before Sub-Divisional Officer during the relevant period.

6. There cannot be any dispute with regard to the proposition canvassed by learned counsel for the appellant that the Court should be liberal in condonation of delay. However, at the same time, no discretion can be exercised by the Court in case where the party does not approach the Court with clean hands and suppresses material facts.

7. First of all it needs to be recorded that the appellant has not led any material/evidence on record to substantiate her contention. This is not the case that no opportunity was accorded to appellant before First Appellate Court to lead evidence. On the other

hand, respondent/original plaintiff examined himself and relied upon documentary evidence.

8. Appellant has claimed that owing to the Covid 19 Pandemic situation and her age, she was prevented from preferring appeal in time. The said contention of appellant is falsified from the material evidence placed on record by the original plaintiff indicating that the appellant, her husband as well as son had appeared in two proceedings before the Civil Court and one proceeding before the Sub-Divisional Officer during the relevant time. This shows that the reason/explanation sought to be given for not preferring the appeal in time is false. Needless to say that party who seeks discretionary relief must come to the Court with clean hands and if it is found otherwise, then no discretion can be exercised in favour of such party.

9. If the submission of learned counsel for appellant is accepted that only because rights of the appellant in the ancestral property are involved and therefore delay needs to be condoned, then provisions of Limitation Act would become otiose. The law in respect of condonation of delay is settled to say that the person seeking

condonation of delay must give sufficient reason and to show that he/she was prevented from filing proceeding within time, owing to the reasons beyond control. Delay can not be condoned if inaction and laches are attributable to such party.

10. Here in this case, appellant has suppressed material fact and sought to seek condonation of delay by making patently false statements. It can not be permitted to any party to put blame on advocate without leading any evidence showing negligence of such professional in providing services. Pertinently, even name of the lawyer has not been referred in application, much less leading evidence to substantiate said ground.

11. In such circumstances, the First Appellate Court was fully justified in dismissing the application for condonation of delay by assigning cogent reasons therefor after taking into account relevant evidence. Considering the fact that the plea of the appellant is not bonafide, this appeal also deserves to be dismissed with exemplary cost. However, considering the gender and age of appellant, nominal cost of Rs. 500/- is imposed. Appeal is dismissed

with cost of Rs. 500/- as no substantial question of law is involved therein.

12. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb