



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 486 OF 2023
WITH CA/11600/2023

Gangaram Datta Bangarwar

...Appellant
(Orig. Applicant)

Versus

Girish Hanumantrao Patil
and Others

...Respondent
(Orig. Respondents)

...

Mr. Ajinkya Reddy, Advocate for Appellant

...

CORAM

: R.M. JOSHI, J

DATE

: JANUARY 11, 2024

PER COURT :

1. This Appeal is filed under Section 100 of Code of Civil Procedure taking exception to the judgment and order dated 14.06.2023 passed in Civil M.A. No. 02/2022 passed by DJ-1, Biloli rejecting application for condonation of delay of 17 years and 8 months in preferring Appeal against judgment and order dated 31.08.2009 in RJE No. 19/2008.

2. The facts which led to the filing of present Appeal in short can be summarized as under:

Respondent Nos. 1 and 2 filed suit being RCS No. 130/2004 against Appellant, his brother and father

in respect of gut no. 989. The suit was compromised on 30.04.2004 and compromise decree was passed therein. Now it is claimed that the said compromise is obtained by playing fraud. It is the case of the Appellant that father died in year 2005 and thereafter, his mother was only person to look after the properties of the deceased. His mother filed RJE No. 19/2008 under Order XXIII Rule 3 of CPC taking exception to the compromise decree passed in RCS No. 130/2004. The said proceeding was rejected on 31.08.2009. The said order was carried in Writ Petition No. 7692/2009. According to him, the proceeding filed before the trial Court were dismissed on 08.08.2017. He further claimed that his mother had filed complaint with Degloor Police Station on 10.05.2013 against Respondent Nos. 1 and 2 under Sections 420, 465 etc of IPC. According to him, Petition filed by these Respondent for quashment of the said FIR is rejected. It is the case of the Appellant that he was residing at Pune and was performing labour work. Appellant claims that he started making inquiry about the FIR registered by his mother and time was consumed for collecting the documents and arranging funds. It is his contention that due to these reasons

the Appeal could not be preferred in time. On these grounds, he sought condonation of delay of 17 years and 8 months by filing application bearing no. 02/2022 before First Appellate Court.

3. Learned Counsel for the Appellant submit that the Court should be liberal in condonation of delay and to support his submissions he placed reliance on the judgment of Apex Court in case of Vidya Devi v. State of Himachal Pradesh and Others, AIR 2020 SC 4709. He further submits that Appellant was shifted to Pune in the year 2002 for doing labour work, hence, he had no knowledge about the proceedings and the order passed therein. It is submitted that his mother had challenged the said decree and also lodged report against Respondent Nos. 1 and 2. It is his contention that due to illiteracy, absence of knowledge of proceeding and on account of financial constraints Appeal could not be filed in time and hence, First Appellate Court has committed error in refusing to condone the delay.

4. There cannot be any dispute about the proposition sought to be canvassed by the learned Counsel for the Appellant that the Court should be

liberal in condonation of delay, provided delay is satisfactorily explained and that there is genuine reason for not preferring the proceedings in time and such reason must be beyond control of the party. Needless to record that the delay and latches should not be attributable to Applicant.

5. In case of Vidya Devi (supra) the Hon'ble Apex Court in case of Land Acquisition has condoned delay of 42 years wherein the State has taken plea of adverse possession. It was held therein that said plea was not tenable and welfare State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens. In the set of these facts, the delay caused in preferring Appeal was condoned. The facts in present case materially differ.

5. Application filed before First Appellate Court shows that it is a case of Applicant that he shifted to Pune and that he had no knowledge about the proceedings and occurrences behind his back. It is however stated therein that his mother had initiated proceedings for taking exception to the compromise decree passed in RCS

No. 130/2004 and she had also lodged report with police in the year 2013. Application further shows that Applicant claims himself to be inhabitant of village Degloor wherein ancestral joint property i.e. Gut No. 989 is situated and further states that his wife and son are residing at Degloor, who are looking after the agricultural land. From these contentions of the Appellant it is not possible to digest that he had no knowledge about his mother having challenged the decree passed in RCS No. 130/2004 and lodged FIR in the year 2013 against Respondent Nos. 1 and 2.

6. For the purpose of condonation of delay, there must be genuine cause of action and not created cause of action. Perusal of the application before the First Appellate Court shows that without there being any occurrence of any event, the Appellant claims to have started searching for the papers and could get the same after sometime. This is said to be cause of action. In considered view of this Court, there is no cause of action accrued in favour of the Appellant and the cause of action sought to be pleaded is created in order to suit his case for seeking condonation of delay caused

in filing Appeal. Pertinently, the delay is of 17 years.

7. Impugned judgment and order shows that the First Appellant Court has rightly taken into consideration facts and circumstances of the case, contentions of the Appellants and negated the same. Perusal of the impugned order shows proper application of mind as cogent reasons have recorded for rejection of the application. In absence of any perversity in the findings, no substantial question of law arises in the present Appeal. Hence, appeal stands dismissed. Pending applications are also disposed of.

(R. M. JOSHI, J.)

Malani