



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

907 SECOND APPEAL NO. 525 OF 2023

Bapu Laxman Sonwane

....Appellant

VERSUS

Ajinath Laxman Sonwane & another

.....Respondents

.....

Mr. S. Y. Mahajan, Advocate for Appellant

Mr. D. R. Bhadekar, Advocate for respondents.

CORAM : R. M. JOSHI, J.

DATE : 2nd FEBRUARY, 2024.

PER COURT :

1. This appeal under Section 100 of the Code of Civil Procedure takes exception to the order dated 25th July, 2023, passed in Misc. Civil Application No. 19/2023 rejecting the application for condonation of delay in filing first appeal against judgment and decree dated 19th July, 2014 passed in Regular Civil Suit No. 259/2010.

2. Parties are referred to as plaintiff and defendants for the sake of convenience.

3. The facts which led to filing of the present appeal can be narrated in short as under :-

Plaintiff/appellant filed Regular Civil Suit No. 259/2010 seeking declaration and injunction in respect of the suit property. It is his contention that defendant No. 1 has sold land admeasuring 73 R land i.e. the suit property to him under registered sale-deed dated 13th August, 2010. When plaintiff went to revenue authorities for mutating his name in the revenue record on the basis of said sale-deed, it was revealed to him that prior to his transaction, sale-deed dated 5th May, 2010 came to be executed by defendant No. 1 in favour of defendant No. 2 in respect of 40R land from the land sold to plaintiff by defendant No. 1. The said suit was dismissed on 19th July, 2014. Plaintiff has filed appeal against the said judgment and decree and as there was delay of 4 years 10 months and 6 days in preferring civil appeal, miscellaneous civil application came to be filed on 24th June, 2019, for condonation thereof.

4. It is the contention of plaintiff in the said application that he was employed with Fire Brigade department at Wai, District Satara and hence, he could not get information about decision in Regular Civil Suit No. 259/2010. He claims that the advocate also did not inform him about the status of the suit. According to him, on 23rd August, 2018, he received notice from defendant No. 1 wherein

there was a reference about dismissal of the suit. He claims that thereafter he went to an advocate who opined that the suit is partly dismissed and hence there is no need to prefer any appeal against decree. Thereafter he again sought opinion from another lawyer, and as per the opinion given by this lawyer, he applied for certified copies of judgment and decree passed in Regular Civil Suit No. 259/2010.

5. Learned First Appellate Court initially rejected the application. The said order came to be challenged by plaintiff in Second Appeal no. 303/2021. This Court has relegated the application back to the First Appellate Court directing the said Court to given an opportunity to the plaintiff to lead evidence. After evidence was led, the impugned judgment and order came to be passed rejecting the application. Hence, this appeal.

6. Learned counsel for plaintiff submits that there is registered sale-deed executed in favour of plaintiff in respect of 73R land and even if it is accepted that defendant no. 1 had no right to execute the sale-deed in respect of the entire land, the Trial Court ought to have held that the transaction of plaintiff in respect of 33 R land is valid. It is his further contention that no prejudice much less

irreparable loss will be caused to defendant No. 1 if delay is condoned and appeal is heard on merit. It is his submission that delay may be condoned by imposing appropriate cost. To support his submissions, he placed reliance on following judgments :-

- (i) Bhivchandra Shankar More vs. Balu gangaram More
LAWS (SC) 2019 5 32.
- (ii) Esha Bhattacharjee vs. Managing Committee of
Raghunathpur Nafar Academy
AIR (SCW) 2013 6158
- (iii) Sonerao Sadashivrao Patil vs. Godawaribai Laxmansingh
Gahirewar
MHLJ 1992 (2) 272
- (iv) Baburao Deorao Wankhede vs. sewa Sahakari Sanstha
& another
1989(2) Bom.C.R. 15.
- (v) Collector, Land Acquisition Anantnag vs. Mst. Katiji
AIR 1987 SC 1353.

7. Learned counsel for defendants opposed the said contention by citing inordinate delay of 4 years and 10 months for preferring the appeal. By referring to the impugned judgment and order, it is contended that the First Appellate Court has rightly taken into consideration the inaction on the part of the plaintiff in filing appeal. It is his submission that contention of the plaintiff that he had no knowledge about dismissal of suit on 23rd August, 2018, and as a result, the appeal has not been filed in time is not acceptable in

facts of the case and this would show malafides on the part of the appellant.

8. This Court is unable to concede to the submission made by learned counsel for the plaintiff that since plaintiff has merit in his case, the delay needs to be condoned. If this proposition is accepted, then provisions of limitation act will become otiose. The Hon'ble Supreme Court in number of judgments has held that delay should be condoned provided there is no inaction, negligence or want of bonafides attributable to the applicant. This Court, therefore, is required to consider as to whether plaintiff herein satisfies the said criteria. Plaintiff has come out with a specific case that he did not have knowledge about dismissal of the suit for want of information from the advocate and for the reason that he was staying away. As rightly observed by the First Appellate Court that plaintiff is literate person and as such he ought to have been diligent in keeping track on his proceeding. Even if it is accepted for the sake of argument that plaintiff did not have knowledge of the decision in Regular Civil Suit No. 289/2010, however, it does not stand to any reason or justification as to why no appeal was filed after written notice issued

by defendant No. 1 on 23rd August, 2018 intimating about dismissal of suit.

9. Explanation sought to be given about lawyer advising him not to prefer appeal as the suit is partly dismissed, does not inspire confidence in the facts and circumstances of the case. There is absolutely no evidence in order to show that any such advice was ever sought from any advocate. Even name of said advocate is not disclosed, much less examining him. The factum of dismissal of suit was communicated to plaintiff by defendant by notice dated 23rd August, 2018. Even then no action is taken to prefer appeal. The contention about he went to seek opinion and thereafter an application was made for certified copies of judgment and then appeal came to be filed is also unreliable. As rightly held by the First Appellate Court that even after obtaining certified copies of the judgment and decree passed in Regular Civil Suit No. 259/2010, appeal is not filed within time. In any case it cannot be ignored that inordinate delay has been caused in filing the appeal and unless genuine cause is made out therefor, delay does not deserve condonation.

10. All aforestated facts clearly show that plaintiff was grossly negligent in taking appropriate action. There is reason to hold that it is deliberate inaction on the part of the plaintiff in not preferring appeal against the impugned judgment and decree in time. Nothing is brought on record by plaintiff to show that he was prevented from preferring appeal for any reason beyond his control. Having regard to these facts, this Court finds no perversity in the findings recorded by the First Appellate Court. Since the findings are in consonance with the facts and circumstances of the case and evidence on record, this Court finds no substantial question of law being involved in this appeal. Hence, appeal is dismissed.

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

(R. M. JOSHI)
Judge

dyb