



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRA NO. 214 OF 2019

Keshav Recvaji Lambe (Died) through
LRs Hausabai Keshav Lambe & anr.

Petitioners

Versus

Mahatma Fule Krushi Vidyapeeth,
Rahuri Through it's Vice Chancellor
B.H. Palve

Respondent

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Mr. A.B. Jagtap, Advocate for the petitioners.
Mr. A.S. Shelke, Advocate for the respondent.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 1st March 2024

Order :

1. Heard rival submissions.
2. The applicants have challenged the order passed by learned District Judge-13, Ahmednagar i.e. the first appellate Court dated 27.11.2019 in Misc. Civil Application No. 177 of 2012. It appears that the learned first appellate Court vide the aforesaid order has condoned the huge delay of 3348 days in filing the first appeal against the judgment and decree passed in Special Civil Suit No. 140 of 1983 by the learned trial Court i.e. 4th Joint Civil Judge (Senior Division) at Ahmednagar.

3. The learned Counsel for the petitioners, who are the original defendants, submits that the learned first appellate Court exercised the discretion erroneously and by relying upon false evidence adduced by the parties condoned the delay. He pointed out that the respondent/Institution was already aware about dismissal of the suit prior to the date i.e. 10.11.2011 on which they allegedly got knowledge of dismissal of the suit. He pointed out that the reason for causing delay is given by the respondent that its officer got retired on 13.06.1996, and therefore, they were not aware about dismissal of the suit. However, in their reply dated 21.02.2011 filed by the respondent itself, there is mention of dismissal of the suit. As such, the respondent was already having knowledge about dismissal of the suit, but they came up with false grounds for condonation of delay. He relied on the following judgments :

- (i) State of Odisha and others vs Suanda Mahakuda (2021) 11 SCC 560*
- (ii) University of Delhi vs Union of India and others (2020) 13 SCC 745*
- (iii) P.K. Ramachandran vs State of Kerala, 1998 AIR (SC) 2276*
- (iv) Basawaraj & anr vs Spl. Land Acquisition Officer, 2014 AIR (SC) 746*
- (v) Collector, Land Acquisition, Anantnag & anr vs Mst. Katiji and others, AIR 1987 SC 1353*

- (vi) Maniben Devraj Shah vs Municipal Corporation of Bruhan Mumbai, 2012 AIR SCW 2412***
- (vii) Rajendra Namdeorao Akre vs Rajkumar Bhalerao Balbudhe and another, 2016 (1) Mh.L.J. 184***
- (viii) Estate Officer, Haryana Urban Development Authority and Another vs Gopi Chand Atreja, (2019) 34 SCC 612***
- (ix) Amalendu Kumar Bera & ors vs State of West Bengal (2013) 4 SCC 52***
- (x) State of Madhya Pradesh & ors vs Bherulal (2020) 10 SCC 654***
- (xi) D. Gopinathan Pillai vs State of Kerala & another (2007) 2 SCC 322***

The learned Counsel for the petitioners also submitted notes of arguments.

The sum and substance of the judgments relied upon by the learned Counsel for the petitioners is that for condonation of delay party must establish that there was sufficient and reasonable cause for not filing the proceeding within the period of limitation and that the delay has to be explained satisfactorily.

4. On the contrary learned Counsel for the respondent/plaintiff submits that the learned first appellate Court has rightly appreciated the evidence of the respondent on the point of causing delay. He also relied on the following judgments :

- (i) N. Balakrishnan vs M. Krishnamurthy, AIR 1998 SC 3222***

(ii) ***Improvement Trust, Ludhiana vs Ujagar Singh & ors***
2010 (6) SCC 786

5. Though there are certain documents showing that the respondent/plaintiff was aware of dismissal of the suit prior to the alleged date according to which they got knowledge of dismissal of the suit, but it appears that the learned first appellate Court, while condoning the delay, has also imposed cost upon the respondent/plaintiff. It seems that the learned first appellate Court has imposed such cost only considering the conduct of the respondent of suppressing the facts. Further, the Hon'ble Apex Court in the case of ***N. Balkrishnan vs M. Krishnamurthy*** (supra) has made following observation :

"t is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the dela. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it

is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court”.

6. Thus, it is extremely important to note that the respondent/plaintiff was having statutory right to challenge the decree passed by the learned trial Court. This Court as well as Hon'ble Apex Court in number of cases has observed that the delay applications are to be dealt liberally and considering the principle of natural justice. In view of the same, the impugned order passed by the learned first appellate Court appears to be proper in the present circumstances, and therefore, the present Civil Revision Application stands dismissed.

7. After pronouncement of judgment, the learned Counsel for the petitioners requested for continuation of interim relief till further period of eight weeks.

8. The learned Counsel for the respondent, though opposed the application since it is decided on merit, but considering the fact that interim relief was in force during the pendency of Civil Revision Application and the petitioners want to challenge the order of this Court, the interim relief, which was in

force during the pendency of Civil Revision Application, is continued till further period of four weeks.

(SANDIPKUMAR C. MORE, J.)

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