

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4392 OF 2021

Shamrao Pandurang Khandekar

...Petitioner

Versus

Kerappa Koyanappa Burange Deceased Through
LRS And Ors.

...Respondents

Mr. B.A. Lawate, for Petitioner.

Mr. Dinesh Bhosale, for Respondents.

CORAM : M.M. SATHAYE, J.

DATE : 20th FEBRUARY 2024

P.C. :

. Rule. Rule made returnable forthwith. Learned counsel for the Respondents waives service. Taken up for final disposal by consent.

2. By this Petition, the original Defendant is challenging the judgment and order dated 01/01/2021 passed by District Judge-2, Pandharpur in Civil Miscellaneous Application No. 61 of 2011. By the said order, the application of the Petitioner for re-admission of appeal under Order 41, Rule 19 of the Civil Procedure Code, was rejected.

3. Few facts shorn of unnecessary details for disposal of the petition are as under. The predecessor of Respondents - one Mr. Kerappa Koynappa Burange filed Regular Civil Suit No. 174 of 1990 against the Petitioner seeking specific performance of contract dated 04/05/1987 in respect of suit land bearing old Gat No. No. 3415 new Gat No. 604 admeasuring 3-H, 93-R at Village Tarangewadi, Taluka

Sangola, District Solapur. By judgment and decree dated 19/07/2001, the suit was decreed and the Petitioner was directed to execute sale deed in favour of the original Plaintiff. There was a delay in filing an appeal by the Petitioner. It appears that the application for condonation of delay filed by the Petitioner was allowed on 16/11/2010 for costs of Rs.3,000/-. It further appears that the Petitioner paid the necessary costs and the appeal was permitted to be registered on 14/12/2010.

4. The Appeal Court issued notices on 23/12/2010. However, the Petitioner did not comply with the procedural requirement and for want of payment of process fee, the appeal came to be dismissed on 16/06/2011. The Petitioner filed Civil Miscellaneous Application No. 61 of 2011 for readmission of the appeal on 07/07/2011 which is evident from the impugned Order itself which is annexed at Exh. G (page 67) of the Petition. This application has been rejected by the impugned order dated 01/01/2021. It is in these facts and circumstances that the Petitioner is before this Court seeking indulgence in the writ jurisdiction of this Court.

5. Heard learned counsel for the Petitioner, who submitted that if the dates are properly appreciated, it can be seen that the application for re-admission of appeal was filed well within time and it could not have been rejected. He submitted that by the impugned order the Petitioner's statutory right u/s. 96 of the C.P.C. for prosecuting substantive first appeal has been taken away. On the other hand, learned counsel for the Respondents, supported the impugned order and has submitted that the Petitioner has been a habitual negligent

person. He submits that even the first appeal was filed belatedly. He further submits that perusal of the impugned order itself shows that during pendency of the application, the Petitioner was not diligent in following the procedure for bringing legal heirs of the deceased Respondents on record. He submits that no diligence be shown to the Petitioner who has conducted in such manner.

6. I have carefully considered the submissions and perused the record. Perusal of the application (Civil Miscellaneous Application No. 61 of 2011) by the Petitioner shows that the reasons given are both inadvertence and stay at Mumbai for the service purposes. Perusal of the impugned order makes it clear that indeed the application for re-admission of appeal was filed within time because appeal was dismissed on 16/06/2011 and the application was filed on 07/07/2011, which is within 30 days of prescribed period. In the teeth of this fact, this Court fails to understand as to how the learned judge of the Appellate Court has gone into the aspect of the Petitioner's conduct during the pendency of the said application for re-admission such as time taken to bring legal heirs of defendant etc. or time prior to filing appeal. Perusal of the para 7, 9 & 10 of the impugned Order shows that the relevant period between issuance of notice by the Appeal Court from 23/12/2010 till 16/06/2011 when the appeal was dismissed, has not been considered. Delay in filing appeal was already condoned and the Petitioner had already paid costs.

7. Instead of considering relevant periods, the learned Appellate Court has considered aspects not germane to the issue involved. The

application itself was made within prescribed period of limitation but that aspect is also not considered at all. Petitioner's valuable right of substantive first appeal is under question and the same will be taken away forever, if the impugned order is not interfered with. For these reasons, the impugned Order calls for interference.

8. However, learned counsel for the Respondents is right in his submission that Respondents and their predecessor / Plaintiff have been litigating since 1990 and have not been able to enjoy the fruits of the decree passed in July 2001 till today. Considering that the appeal will now be considered on merits and the decree will be put under question after such a long time, the Respondents need to be compensated appropriately.

9. Hence, the following order :

(A) Subject to condition that the Petitioner deposits costs of Rs. 20,000/- in the Appeal Court at Pandharpur within a period of 4 weeks from today, the impugned order dated 01/01/2021 passed in Civil Miscellaneous Application No. 61 of 2011 is quashed and set aside, said Civil Miscellaneous Application 61 of 2011 is allowed and the Civil Appeal No. 126 of 2010 is re-admitted for hearing on merits. It is clarified that if costs are not paid as stipulated above, this petition shall stand dismissed without further reference to the Court.

(B) On deposit of costs as aforesaid, the Respondents shall be at liberty to withdraw the same unconditionally.

- (C) Considering that the suit is of the year 1990 and matter has remained pending for a very long time, the Appellate Court at Pandharpur is requested to dispose of the aforesaid Civil Appeal No. 126 of 2010 preferably within a period of 6 months from the date of presentation of this Order. Petitioner is directed to cooperate with hearing of appeal and not take unnecessary adjournments.
- (D) Rule is made absolute and Writ petition is disposed of in the above terms.

10. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)