

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1734 OF 2023

Laxman Hanuman Shinde & Ors.

.. Petitioners

Versus

Sushila Bramhadev Ursal & Ors.

.. Respondents

.....

- Mr. Sandeep R. Waghmare a/w Mr. Rahul Motkari for Petitioners
- Mr. Shantaram Tarale a/w Ms. Geetanjali Shinde for Respondent Nos. 1 to 3

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 22, 2024

P. C.:

1. Heard Mr. Waghmare, learned Advocate for Petitioners and Mr. Tarale, learned Advocate for Respondent Nos. 1 to 3.

2. Present Writ Petition takes exception to the order dated 15.12.2022 passed in Application filed below Exh. 70 in RCS No. 383 of 2012 by Defendant Nos. 2 to 4 for setting aside “No Written Statement” order dated 16.02.2016 in respect of Defendant Nos. 3 and 4 and order dated 26.06.2014 in respect of Defendant No. 2. Suit is filed in the year 2012.

3. It is vehemently contended by Mr. Tarale on behalf of Respondent Nos. 1 to 3 (original Plaintiffs) that Suit is essentially for partition between Plaintiffs and Defendant No. 1 and in view of Defendant No. 1 having sold his undivided share in the suit property

to Defendant Nos. 2 to 4, the said Defendants were impleaded in the suit proceedings. He would submit that in any event Defendant Nos. 2 to 4 would only be entitled to the right that may be accrued to Defendant No. 1 subject to the decision in the partition suit.

4. The aforesaid position is infact admitted. Defendant Nos. 2 to 4 filed Application below Exh. 70 dated 21.03.2022 for setting aside the “No Written Statement” orders wherein the reasons for the delay have been enumerated in paragraph Nos. 2, 3 and 4 of the said Application. In that Application, Defendant Nos. 2 to 4 have also conceded the fact that the principal suit is filed for partition only.

5. Be that as it may, the limited question that arises before me is whether to condone the delay which has been rejected by the learned Trial Court by the impugned order dated 15.12.2022. While rejecting the Application for condonation of delay, learned Trial Court is guided by the decision of the **Atcom Technologies Ltd Vs. Y.A. Chunawala and Company & Ors.**¹ which Mr. Tarale has placed before me today and has taken me through paragraph Nos. 13, 16 and 17 thereof.

6. It is argued by Mr. Tarale that on a fair reading of the impugned order, it would reveal that the suit is almost at the stage of arguments. Be that as it may, there is no denial of the fact that Defendant Nos. 2 to 4 are the subsequent purchasers of the undivided share of

¹ 2019(2) Mh.L.J. 26

Defendant No. 1 in the suit property. There is a delay of about six years between 2014 and 2020 as it stands. As enumerated above, the reasons which are stated in paragraph Nos. 2, 3 and 4 are to the effect that the said Defendants do not reside within the territorial jurisdiction of the Trial Court and for the purposes of their vocation and trade, they are required to travel and stay outside the jurisdiction of the Court. That apart it has also been stated that despite the above, they used to maintain a constant interaction with their Advocates and inquire about the dates of hearing as also whether their presence would be required but they were not informed so by their Advocate. This is one of the main reasons which is taken in the Application where the blame for delay is put on the Advocate handling the matter.

7. Considering the fact that Defendant Nos. 2 to 4 are admittedly purchasers of Defendant No. 1's interest, there is every possibility that Defendant No. 1 may not be in a position or rather will not be very serious in defending the suit proceedings which would ultimately affect the rights of Defendant Nos. 2 to 4. There is no doubt that there is delay but coming to the explanation offered by Defendant Nos. 2 to 4 in the Application, which has been perused by me, I am inclined to accept the same and condone the delay so as to not non-suit the said Defendants and to preserve their rights. But considering the delay, I

am also inclined to direct the Defendants to pay substantial costs for the delay and dereliction to the Plaintiffs.

8. The reliance placed by Mr. Tarale on the decision in the case of Atcom Technologies Ltd (*supra*) has been considered by me. The said decision states that demonstrating a valid reason for not filing the written statement within the prescribed time is required to be stated as also proper grounds for condoning the delay would also have to be calculated and stated. In that case, the Supreme Court failed to persuade itself with the kind of reasoning which was given by the High Court while condoning the delay of approximately the same amount of time as in the present case. In so far as the present case is concerned, the Application dated 21.03.2022 lists the grounds for delay as referred to herein above in paragraph Nos. 2, 3 and 4 of the Application enumerating all reasons for the delay. After perusing the same, in the facts of the present case, rather considering the grounds which are stated in the Application, they are clearly distinguishable from the facts contained in the decision of the Supreme Court, rather the ratio of the said decision in the case of Atcom Technologies Ltd (*supra*) and hence the said decision cannot be *ipso facto* applied to the facts of the present case. I hence, beg to defer from the same as the facts and grounds are different and clearly distinguishable.

9. In view of the above, the impugned order dated 15.12.2022 passed in Application below Exh. 70 stands quashed and set aside subject to payment of costs of Rs. 25,000/- to be paid by Defendant Nos. 2 to 4 to the Plaintiffs in RCS No. 383/2012. Said costs shall be paid within a period of three weeks from today positively. No extension of time shall be granted. Subject to producing the receipt of payment of the said costs before the learned Trial Court, learned Trial Court shall permit Defendant Nos. 2 to 4 to file their written statements and take the same on record and thereafter proceed with determination of RCS No. 383/2012 strictly in accordance with law and adjudicate the suit as expeditiously as possible and in any event within a period of six months from today. Parties shall not insist for unnecessary adjournments and the learned Trial Court shall give adjournment only if it is utmost necessary.

10. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
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2024.02.22
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