



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.10 OF 2018
IN
SECOND APPEAL (ST.) NO. 26235 OF 2017

Yashwant Kondiba Hagare

... Applicant.

Versus

Babu Yesu Hagare (deceased heirs)

1a) Shankar Baburao Hagare and Ors.

... Respondents.

Mr. Prabhujan Gujar for the Applicant.

Mr. Suhas S. Deokar, for the Respondent Nos.4 and 5.

Coram : Sharmila U. Deshmukh, J.

Date : April 19, 2024.

P. C. :

1. Heard.
2. Civil Application has been preferred seeking condonation of delay of 7 years and 59 days caused in preferring the present second appeal. Second Appeal has been preferred against the judgment dated 16th April, 2010 passed by the 1st Appellate Court in Regular Civil Appeal No.275 of 2006.
3. Regular Civil Suit No.15 of 2004 was instituted by the present applicant for declaration of ownership over the suit land and for

permanent injunction against the respondents. In those proceedings, the counter claim was filed demanding partition. The suit came to be dismissed and the counter claim was decreed determining the share of the plaintiff and defendant Nos.1, 2 6 and 7 in the suit land.

4. As against the judgment of the Trial Court, Regular Civil Appeal No.275 of 2006 was preferred by the plaintiff before the District Court which came to be dismissed on 16th April, 2010. The present Civil Application has been preferred on 6th September, 2017 along with Second Appeal.

5. Heard Mr.Gujar, learned counsel appearing for the Applicant and Mr.Deokar, learned counsel appearing for the Respondents.

6. Mr. Gujar, learned counsel appearing for the Applicant would submit that the pleadings in the application make out sufficient cause as after being informed in the month of May, 2010 about the dismissal of the First Appeal, the Applicant had approached his Advocate in the month of May, 2010 itself, however, due to Court vacations, he could not meet his Advocate. He would further submit that, thereafter, in June, 2010, he was informed by the Advocate to collect the papers and as there was certain professional charges which remained to be deposited, the Applicant arranged for the funds to pay his Advocate

before collecting the papers. In December, 2010, he attended his Advocate's office, however, the Advocate was not available to meet him. He submits that subsequently, due to his health issue and old age, the Applicant could not visit the Advocate's office at Pune from his native place at Roadewadi, Taluka Shirur. He would further submit that it is specifically pleaded that the Applicant is solely looking after the Court proceedings and due to his ill-health and old age, he could not take timely steps to approach his Advocate. He would further submit that the delay for the period from 2013 is also explained as the medical condition was then a little-bit stable and he approached his Advocate in the month of September, 2013. Thereafter, the certified copies of the judgment and decree were made available in December, 2013. However, due to agricultural work, he was not able to approach his advocate and in May, 2014, he visited his advocate's office and collected the certified copies. He would further submit that it is an admitted position that the Applicant is an agriculturist and the family depends upon the agricultural income and there was no source of funds and in view of the financial crunch as well his age health issues, ultimately when he received notice in the executing proceedings in the year 2016, he approached his Advocate through his son in the first week of May, 2017 and the Appeal was filed in the first week of July, 2017.

7. Learned counsel for the Applicant would further submit that the facts of the matter would indicate that a meritorious matter should not be thrown out at the threshold on the ground of delay. He submits that the Applicant in the present case had purchased the suit property in the proceedings under 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 and certificate was issued in his name. He submits that the partition of all the ancestral properties in the year 1977 has been admitted and the suit land was purchased in the year 1980. He submits that the other branch of his uncle would not have any right in this tenanted land which he has purchased, even if it is considered that his own brothers would have a right in the properties. He submits that however, the Appellate Court has granted the share to both the branches and as such, the Appeal is meritorious matter and deserves consideration. He would further submit that by imposing reasonable cost, in the interest of justice, the application can be allowed.

8. *Per contra*, Mr. Deokar, learned counsel for the Respondents submit that the averments made in the application seeking condonation of delay do not deserve any consideration for the reason that after the judgment of the 1st Appellate Court passed on 16th April, 2010, despite the share being determined by the Trial Court

Judgment, the Applicant has sold portion of the suit land in excess of his share by registered sale-deed dated 29th December, 2012. He would submit that the pleadings as regards the ill-health and old age do not deserve to be considered as in the revenue proceedings challenging the sale deed, the Applicant was a party to the proceedings and the proceedings were defended at his instance. He submits that the said proceedings took place during the year 2013. He submits that the application came to be adjudicated in the year 2017 and was being regularly followed up by the Applicant. He would further submit that subsequently another portion of the land was sold on 24th August, 2017 by the Applicant which shows that only as far as the present proceedings are concerned, plea of old age and financial crunch is raised whereas on the other hand, the Applicant has sold out portions of the land pending the proceedings and has also defended revenue proceedings.

9. Considered the submissions and perused the record.

10. The dates are undisputed that the judgment and decree of the Trial Court was passed on 16th April, 2010 and the Applicant became aware of the same immediately on 1st May, 2010. It will therefore have to be considered whether sufficient cause has been made for condoning the delay for the period May, 2010 till the year 2017 i.e. a

period of 7 years 59 days. It is well settled that each and every days of delay is not required to be explained. Further it is not the length of delay which matters but the explanation tendered. There must be sufficient explanation for condoning the delay.

11. In the present case, the explanation which is tendered is that after May, 2010, funds were being collected for the payment of Advocate's fees and in December, 2010, the papers were handed over to the Applicant. It is alleged that in 2011, due to old age, the applicant was mostly bedridden and not physically capable and not in proper state of mind to approach his advocate so as to take necessary steps. In 2013, he approached the Advocate for the purpose of challenging the impugned judgment who informed him that the same would entail financial expenditure and certified copies will have to be applied which was applied in September, 2013 and made available in December, 2013. The pleadings are extremely vague and bereft of any particulars. The long period of 7 years and 59 days is sought to be explained by setting out some explanation for each year, for example in 2010, the Applicant collected the funds, in 2011, he was bed-ridden, in 2013, the Applicant approached his advocate. There is no complete chain of events demonstrated so as to constitute sufficient explanation for the delay.

12. After obtaining certified copies in December, 2013 till 2016, for a period of almost two years, no steps were taken by the Applicant. Upon receipt of notice of execution application in the year 2016, the Applicant has sprung into action and has thereafter proceeded swiftly and approached the present Advocate for the purpose of filing the Second Appeal in the month of May, 2017.

13. It is contended in the application that due to his old age and medical ailments, he was bedridden for most part of the time. In support of the said contention, leave aside substantial medical reports there is not even a single Doctor's certificate annexed to the application to demonstrate that the physical condition of the Applicant was such that he was unable to carry out his day to day affairs. The sale-deed annexed to the affidavit-in-reply shows that in the year 2012 itself the Applicant has sold portions of the suit land in excess of his share which discloses the dishonest conduct of the Applicant.

14. Perusal of the sale-deed would indicate that the same has been executed by the Applicant himself. The Applicant was physically fit to attend the Registrar's office for the purpose of executing the sale-deed and receiving the consideration, however, when it came to filing of present Second Appeal, plea of old age and medical ailments is

sought to be raised. It also needs to be noted that the sale-deed was for a consideration of ₹3,50,000/- and thus, the reason of financial crunch is also diluted. It also needs to be noted that against the sale-deed when the RTS proceedings are pending, the same were diligently being pursued by the present Applicant. The diligent pursuance of the parallel legal proceedings negates the explanation of ill-health and/or lack of funds as well as short term memory loss and other diseases, tendered for not filing present second appeal in time. Further the applicant has in the year 2017, despite being aware of the judgment of the year 2010 has once again sold certain portion of the suit land by way of registered sale-deed for sum of ₹12,50,000/-.

15. The above sequence of events would demonstrate that the Applicant was in perfect health and in a position to conduct his day to day affairs and has even gone to the extent of selling portion of the property despite being aware of the judgment of the 1st Appellate Court in the month of May, 2010 itself. The conduct discloses dishonest intention and scant regard for the judgment passed by the Trial Court and the Appellate Court. The pleadings in the application though filed on oath are totally incorrect and false to the knowledge of the Applicant himself. There is sufficient material which has been brought on record by the Respondents to show that during the period

from 2010 to 2017, not only the Applicant was indulging in sale of the properties to which he had no right but also pursuing other legal proceedings. Considering the conduct of the Applicant, this Court was inclined to dismiss the application with heavy costs however, has refrained from doing so. It is well settled that the provisions of Section 5 of the Limitation Act, 1963 would not come to the aid of litigant who is negligent and sleeps over his rights. While exercising the discretion for condonation of delay, the Court will look into the conduct of the Applicant and test the veracity of the explanation tendered. Even if the delay is substantial, if, the delay is reasonably explained and the applicant's conduct is bonafide, the court will usually adopt a liberal approach. The explanation tendered does not make out any cause much less sufficient cause for condoning the colossal delay of 7 years and 59 days. No case for condonation of delay is made out. In the present case, the conduct of the Applicant besides being negligent is also dishonest which is demonstrated from the material on record.

16. Having regard to the above discussion, the Civil Application stands dismissed.

[Sharmila U. Deshmukh, J.]