

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 1032 OF 2020

Sulabai Sukhdev Kandalkar and Ors.

... Petitioners

Versus

Maruti Bajaba Kandalkar and Ors.

...Respondents

Mr. Rupesh A. Zade a/w Ms Priyanka Gupta, for the Petitioners.

Mr. Vilas B. Tapkir, for Respondent Nos. 1 to 4.

CORAM : MANJUSHA DESHPANDE, J.

DATE : 27th MARCH 2024

P.C. :

1. The petitioners herein are challenging the order dated 7th October 2019 passed by the District Judge – 10, Pune, in Miscellaneous Civil Application No. 426 of 2019. The petitioners have also sought further directions that the petitioners may be allowed to pay the cost, as per the order dated 11th September 2019 passed in the said application, and their appeal may be directed to be registered as per rules.

2. The petitioners in the present Writ Petition are the Original Defendant Nos. 2 to 4 in Regular Civil Suit No. 165 of 2014 filed by the

respondents herein, before the Civil Judge Junior Division, Ghodnadi (Shirur). The said suit of the respondent (Original Plaintiffs) was filed for declaration and perpetual injunction, and it was decreed by order dated 22nd February 2019. The petitioners herein feeling aggrieved by the issue of decree in favour of the respondents herein, challenged the same by filing Regular Civil Appeal alongwith Misc. Civil Application No. 426 of 2019 for condonation of delay. The learned District Judge has allowed the Misc. Civil Application No. 426 of 2019 with a condition to pay cost of Rs.500/- to each of the non-applicants, within 15 days from the date of order, vide order dated 11th September 2019. On the payment of cost by the applicants, the appeal was directed to be registered as per rules. There was a further condition that, on failure to pay the cost by the applicants within time, the application will stand dismissed automatically. Learned District Judge has passed a conditional order while allowing the application filed by the present petitioners.

3. The application of the petitioners for condonation of delay was allowed by imposing certain conditions. Though the petitioners were granted 15 days time to deposit the cost, the petitioners could not

deposit the same within the time stipulated. It is the case of the applicant/present petitioners, that the petitioners had approached the concerned clerk of the court for the copy of the said order, but the file could not be located by the concerned clerk. As a result, the petitioners could not deposit the cost within the stipulated time, therefore, they filed an application before the same court, seeking permission to deposit the cost, after expiry of the time mentioned in the order dated 7th October 2019. The petitioners in the said application prayed that, if the application is not allowed, irreparable loss would be caused to the petitioners. Therefore, permission of the concerned court was sought to deposit the said amount. There was no say filed by the respondents to the said application and the court proceeded to pass an order rejecting the application. Learned Judge has observed that, since it was a self serving order the application stood automatically dismissed, therefore, the application is not maintainable and time for depositing the cost also cannot be extended. In view of the same, the application has been rejected by order dated 7th October 2019.

4. Though the respondents have not filed any say to the said application (Exhibit- 16), however, in the present Petition the

respondents have strongly opposed the grant of prayer in the present Petition. According to the learned counsel for the respondents, the concerned court has become *functus officio* after the order has been passed, granting the application for condonation of delay by order dated 11th September 2019. Therefore, the court has rightly passed the order impugned and refrained from passing any order in favour of the applicant. It is submitted that the District Judge has rightly passed the order rejecting the application.

5. I have heard learned counsel for both the parties. After hearing the arguments and going through the Petition alongwith annextures, it is evident that, the substantial rights of the present petitioners are at stake. The decree is passed by the learned Civil Judge Junior Division, Ghodnadi in favour of the respondents herein. The petitioners are aggrieved by the order of declaration of ownership and possession over the suit property in favour of the respondents. The petitioners have filed the Regular Civil Appeal alongwith the Application for condonation of delay. The delay is of meagre 9 days, therefore, the application was allowed by the learned District Judge. Unfortunately,

the petitioners could not take timely steps for compliance of the conditional order within stipulated period, as a result of which, their substantial rights are at stake. It is not disputed that the application filed by the petitioners was after the prescribed period of 15 days was over. The petitioners have simply sought permission of the concerned court for depositing the penalty imposed by the court with no other prayer. In fact, the petitioners ought to have filed an application with a prayer to recall the said order, as the period mentioned in the order granting permission to deposit the cost was already over. Considering that, if the order passed by the learned District Judge – 10 (Exhibit- 16) in Misc. Civil Application No. 426 of 2019 dated 7th October 2019 is not set aside, it would cause irreparable loss to the petitioners and their Appeal would not be registered.

6. The subject matter of the suit pertains to ownership and possession of the suit property, it would be too harsh on the concerned party to be left remediless, therefore, it would be appropriate to quash and set aside the order passed by the District Judge – 10, Pune, dated 7th October 2019.

7. It is apparent that the petitioners herein had not made proper prayers in the application, as a result, the impugned order came to be passed by the learned District Judge. Because of the order impugned, the petitioners have now approached this Court and the respondents herein have also been unnecessarily dragged to this Court. Therefore, in my opinion, it would be appropriate to grant cost of Rs.10,000/- to the respondents herein.

8. The petitioners herein are at liberty to file an appropriate application for recall of the order before the concerned court, and the court may pass appropriate orders thereon.

9. In view of the aforementioned observations, the Writ Petition stands allowed. The impugned order dated 7th October 2019 is quashed and set aside. The petitioners herein are at liberty to file a fresh application making appropriate prayers before the District and Sessions Judge, Pune, within a period of two weeks from the date of uploading of this order. The petitioners shall deposit the cost of Rs.10,000/- in the District Court, Pune alongwith the fresh application, and the respondents herein shall be at liberty to withdraw the said amount of

cost. The said application to be decided by the learned District and Sessions Judge, Pune, on its own merits.

10. With the above observations, Writ Petition stand disposed of.

[MANJUSHA DESHPANDE, J.]