

Ajay

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

WRIT PETITION NO. 3024 OF 2024

Ramchandra Sambhaji Ghule

.. Petitioner

Versus

~~Krushnabai Anandrao Gund~~

(since deceased through legal heirs)

Vsantrao Anandrao Gundpatil

.. Respondents

-
- Mr. Sanjay Bhojwani, Advocate for Petitioner.
-

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 27, 2024.

P.C.:

- 1.** Not on board. Mentioned. Taken on board.
- 2.** Heard Mr. Bhojwani, learned Advocate for the Petitioner.
- 3.** This Writ Petition takes exception to the judgment and order dated 30.11.2023 passed by the District Court in Civil Miscellaneous Application No.1042 of 2016. Exhibit – “5” order is passed by the learned Trial Court in Regular Civil Suit No. 2129 of 2012 on 01.08.2016. There are 20 original Defendants in the Suit proceedings. One of the original Defendants namely Defendant No.14 filed Miscellaneous Appeal to challenge the Exhibit - “5” order before the District Court. There was a delay of 54 days in filing this Miscellaneous Appeal and hence original Defendant No.14 preferred Civil

Miscellaneous Application for condonation of delay of 54 days so that the Miscellaneous Appeal can be registered and heard by the Court.

4. By virtue of the impugned judgment and order dated 30.11.2023, the Application for condonation of delay of 54 days has been dismissed by the District Court. The original Defendant No.14 has challenged the said order by the present Writ Petition.

5. Mr. Bhojwani, learned Advocate for the Writ Petitioner would submit that the learned Trial Court passed the Exhibit – “5” injunction order dated 01.08.2016 after a lapse of 4 years, after filing the Suit and at that time the Defendant No.14 was out of station for his personal work and when he returned he was also ill during the said period. He would submit that it is the case of Defendant No.14 that he did not have knowledge of the passing of the Exhibit – “5” order and when he learnt about the order, he immediately applied for certified copy on 15.10.2016. Immediately thereafter he filed Miscellaneous Appeal to challenge the said order on the ground that the Defendant No.14 was the owner of the Suit property and alongwith other Defendants in the Suit who were all his family members and they had constructed a house in the Suit property. Hence being aggrieved, he challenged the Exhibit – “5” order before the District Court.

6. He would next submit that during the pendency of the Application, the Respondent No.1 namely Plaintiff expired and her

legal representatives were brought on record. These legal representatives of the Plaintiff opposed the Miscellaneous Application seeking condonation of delay and the learned District Court has accepted their case and rejected the Application thereby refusing to condone the delay of 54 days.

7. I have perused the impugned order dated 30.11.2023 and heard Mr. Bhojwani, learned Advocate for the Petitioner – Defendant No.14. The Application seeking condonation of delay of 54 days is rejected by the District Court on the ground that the Defendant No.14 has not mentioned the period during which he was out of station and the period during which he was ill and hence the grounds are considered to be too vague to condone the delay. District Court has further held that no document is filed to indicate that the Defendant No.14 was ill and hence he was negligent and therefore sufficient cause cannot be liberally construed by the Court.

8. Next, the District Court has held that the ground that Defendant No.14 was not aware of the order is not legally acceptable.

9. The Application filed by the Defendant No.14 is at Exhibit “E” page No.68 of the Petition. It is filed on 25.10.2016 and decided by the District Court on 30.11.2023. It is seen that during the pendency of the Application, the Plaintiff expired. Perusal of the Application shows that in paragraph No.3 the reasons for seeking condonation of delay

have been stated. In paragraph No.4, the Defendant No.14 has stated that the Defendants in the Suit have their independent houses on the Suit property and hence the Exhibit – “5” order is detrimental to the interest of the Defendants. In paragraph Nos.5 to 12, legal grounds have been stated as to how the Exhibit - “5” order would affect the rights of the Defendants. Therefore the relief of condonation of delay of 54 days to maintain the Appeal to challenge the Exhibit - “5” order is sought.

10. It is seen that learned District Court has expected the Applicant i.e. Defendant No.14 to state and explain each day's delay with respect to the period when the Applicant i.e. Defendant No.14 was out of station and during which he was ill. Such an expectation is not contemplated so as to explain each day's delay. If delay is required to be explained then there is no reason why a Miscellaneous Application filed in the year 2016 is decided on 30.11.2023 by the learned District Court. On the merits of the matter, what is crucial to be noted is that after filing of the Suit in 2012, injunction is granted in the year 2016, after more than 4 years. The Exhibit – “5” order of injunction dated 01.08.2016 is a very wide order. It is at Exhibit “D” page No.60 of the Writ petition. By virtue of the said order, all Defendants are enjoined from alienation of the Suit property and even carrying out construction on the Suit property until the Suit is decided.

11. In that view of the matter, the challenge maintained thereto needs to be heard in accordance with law by the District Court. Admittedly there is a delay of 54 days but rejecting the Application for condonation of delay to file the Miscellaneous Appeal against the order of injunction is *prima facie* harsh on all Defendants. If one of the Defendants' desires to challenge the same, the same should be undoubtedly heard. In that context, the reasons advanced by the Defendant No.14 in his Application should be liberally construed as due sufficient cause for the delay in filing the Miscellaneous Appeal.

12. This Court is not opining on any of the merits of the matter, save and except the reasons seeking condonation of delay of 54 days. In the opinion of this Court and the facts and circumstances of the present case, namely the timeline involved as delineated hereinabove, the impugned judgment and order dated 30.11.2023 is not sustainable. Hence, judgment and order dated 30.11.2023 it is quashed and set aside. Civil Miscellaneous Application No. 1042 of 2016 seeking condonation of delay of 54 days in filing Miscellaneous Appeal against the Exhibit - "5" order dated 01.08.2016 stands allowed. The delay of 54 days stands condoned.

13. It is however clarified that after the Miscellaneous Appeal is registered by the Court, the same shall be heard on its own merits after hearing the Plaintiffs and the Defendants and strictly in accordance

with law. Considering the delay which is writ large in the present case, the learned District Court is requested by this Court to dispose of the Miscellaneous Appeal which shall be registered within a period of 4 months from today.

14. A server copy of this order shall be placed before the learned District Court by the Advocate for the Petitioner on 01.04.2024 at 11.00 a.m. and the learned District Court shall thereafter pass appropriate directions for registration and disposal of the Miscellaneous Appeal at its discretion.

15. Appropriate notices shall be issued to all concerned parties by the learned District Court so that all parties are adequately heard in the Miscellaneous Appeal.

16. With the above directions, Writ Petition stands allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay