



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION NO.853/2019 IN
SECOND APPEAL ST. NO. 8877/2019

Gunwant Amrutrao Dhobale (Dead) through its LR's Dnyaneshwar Gunwant
Dhobale and Others .Vs. Padmabai w/o Hanumanprasad Atal

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. S. Patil, Advocate for appellants/applicants.
Mr. A. J. Gilda, Advocate for respondent/non applicant.

CORAM : ANIL L. PANSARE, J.

DATE : 02.01.2024

By the present application, the appellants are seeking to condone the delay of 13 years and 3 months in filing second appeal against the judgment and decree dated 26.10.2005, passed by the learned first appellate court in Regular Civil Appeal No. 128/1997.

2. Having heard both the sides and having gone through the material placed before me, it transpires that the appellant no.1 was respondent no.1 before the first appellate court. Appellant no.2 (since deceased and now represented by legal representatives) was respondent no.2. Appellant no.3 was respondent no.3 and appellant no.4 was respondent no.4. The appellant no.1a is the adopted son of appellant. As such, the appellant no.1a is son of appellant no.3. However, the appellant no.1a has come up with a case that his uncle; appellant no.1, has adopted him some time on or about 22.11.2001. Appellant nos. 1, 2, 3 and 4 are brothers.

3. Appellant no.1a viz. adopted son, has come up with a case that on 26.04.1989, the partition was effected between four brothers. The suit property fell in the share of the appellant no.1. According to the appellant no.1a, appellant no.1 has, during the lifetime, never discussed about pendency of the appeal. Appellant no.1a, therefore, was not aware of passing of the judgment dated 26.10.2005, as he did not receive any communication from the counsel or the other brothers of the appellant no.1. The execution was filed on 05.01.2016. The appellant no.1a received notice of execution proceeding in the month of March, 2018 and accordingly, for the first time, he came to know about the judgment and order passed by the first appellate court.

4. It is further the case of appellant no.1a that he appeared in Regular Darkhast No.1/2016 and, thereafter, started collecting information under the Right to Information Act, 2005 (hereinafter referred to as the, "RTI")

5. Learned counsel for the respondent has pointed out that the appellant no.1 is misleading the Court. He submits that the appellant no. 1a has filed an application under the RTI on 21.05.2017. Thus, on one count the appellant no.1a states that he came to know about the impugned judgment when he received notice in execution proceedings in the month of March, 2018 and on the other, upon his own showing, he has filed application under the RTI in May, 2017.

6. Learned counsel for the respondent has then invited my attention to the additional affidavit filed by the appellant no.1a. The appellant no.1a has stated that in the year 2016, he received information from the relatives that the execution proceedings were filed by the respondent before the executing Court. He has, then made efforts to collect the details but, in vain. Thereafter, he has filed the application under the RTI.

7. Thus, it appears that the appellant no.1a has not come clean before the Court. He has conveniently omitted to state in the application that he came to know of the impugned judgment in the year 2016. He has filed additional affidavit but has not amended the application and thus the pleading in the application continue to state that he came to know, for the first time in March, 2018, about passing of the impugned judgment, which runs contrary to the facts put forth by the appellant no.1a through additional affidavit.

8. That apart, if case of the appellant no.1a is to be accepted, the question arises as to; if in March, 2018 the appellant no.1a has come to know of passing of the impugned judgment, why did he wait for 13 more months to file the present application? Further, the application has been filed not only by the adopted son but also by the original respondents before the first appellate court. There is no justification coming forth as to why did they not approach the Court well within time.

9. On the point of making incorrect statement and consequences thereof, the learned counsel for the respondent has referred to the judgment of the Hon'ble Supreme Court in the case of **Pundlik Jalam Patil (Dead) By LRs. Vs. Executive Engineer, Jalgaon Medium Project and another**, reported in **(2008) 17 SCC 448**. The Supreme Court held that an incorrect statement made in the application seeking condonation of delay itself is sufficient to reject the application without any further inquiry as to whether the averment made in the application reveal sufficient cause to condone the delay. The Court further held that a party taking a false stand to get rid of the bar of limitation, should not be encouraged to get any premium on the falsehood of his theory by condoning the delay.

10. On the point of waiting for 13 months after receiving knowledge, the counsel for the respondent has relied upon judgment in the case of **Basawaraj and anr. Vs. The Spl. Land Acquisition Officer**, reported in **AIR 2014 SC 746**. The Supreme Court has held, in paragraph 15, as under:

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground

to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

Thus, the Supreme Court has held that in a case if a party is found to be negligent or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay.

11. Both the judgments would squarely apply to the facts of the present case. Firstly, the appellant no.1a has made incorrect statement of acquiring knowledge in March, 2018, by suppressing the fact that in the year 2016 he was aware of pendency of the execution proceedings. And secondly, despite receiving knowledge of pendency of proceedings, he remained negligent and inactive for 13 months by not taking immediate steps. In other words, the appellant no.1a utterly failed to show that there was sufficient cause which prevented him to approach the Court within time. There is no merit in the application. Hence, it is rejected. No order as to costs.

(Anil L. Pansare, J.)