



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Civil Application (CAS) No. 1117 of 2023
in

Second Appeal St. No. 16507 of 2023

[Sau. Mandabai w/o Shyamlal Mohone and anr. **..vs..** Gajanan s/o Vishwanathrao Dhusan]

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

Court's or Judge's orders

Mr. N. L. Jaiswal, Advocate for the applicants
Ms. Kalyani P. Dharashivkar, Advocate for the non-applicant

CORAM : ANIL L. PANSARE J.

DATED : 19-03-2024

By the present application, the applicants are seeking to condone delay of 252 days in filing second appeal against the judgment and decree dated 18-8-2022 passed by Ad-hoc District Judge-2, Nagpur in Regular Civil Appeal No. 431/2019. It appears that the trial Court had decreed the suit in favour of the respondent – plaintiff vide judgment and decree dated 23-8-2019 in Special Civil Suit No. 326/2014, the operative part of which reads thus :

“1] The suit is decreed with costs.

2] It is hereby declared that the plaintiff is the owner of the suit property i.e. Plot No. 35, admeasuring 735 sq.ft. P.H.No.34-A, CTS No. 241, Sheet No. 615/55, in the layout of Kirtidhar Co. Op. Housing Society Ltd. Nagpur, Tah. & Dist. Nagpur.

3] The defendants do deliver the vacant possession of the suit property within two months from the date of this order.

4] The defendants are hereby permanently restrained from alienating the suit property to anybody without following due process of law.

5] Inquiry be held as to future mesne profit.

6] Decree be drawn up accordingly.”

2. The applicant intends to challenge this decree but failed to file appeal within stipulated time, hence has filed present application. The delay is explained in following terms.

“(2) The impugned judgment and decree was passed by First Appellate Court on 18/08/2022. Thereafter the Appellant immediately on 30/08/2022 moved an application for certified copy of said judgment and received the same on 16/09/2022. Thereafter somewhere in the first week of October 2022 appellant approached Advocate for challenging impugned decree. The advocate of appellant has taken almost one week to go through the documents and suggested to file second appeal before this Hon’ble court. At that time Advocate has intimated the appellants that they would have to pay court fees around Rs. 21000/- for filing Second Appeal. With the assurance arrange said amount earliest, appellant somehow collected said amount of court fees.

(3) The financial condition of the appellant is very weak and he is only earning member in the family. He has to take care of entire family. Unfortunately old aged mother of appellant no. 2 has fallen ill. The entire saving amount by the appellant for the purpose of court fees had been spend upon the medical bills of his mother. Due to this the appellant could not arrange the court fees and for the said reason appellant did not contacted his advocate.”

3. Thus, the first appellate Court has dismissed the appeal on 18-8-2022. The appellant took 12 days to apply for certified copy of the judgment which ultimately was received on 16-9-2022. The appellant took three weeks to approach Advocate. No reason has been

assigned for this delay. Further delay is on account of making arrangement for the Court Fees. Applicant no. 2 state that he was required to spend amount available with him on medical bills of his mother. As such, no document has been filed to substantiate aforesaid claim, however, the appellant was at liberty to take recourse to Section 149 of the Code of Civil Procedure, 1908 which refers to powers to make deficiency of Court Fees. The Supreme Court in the case of ***Ajay Dabra Vs. Pyare Ram and ors., [2023 SCC Online SC 92]***, while dealing with ground of being short of funds to pay the Court Fee to condone the delay, has referred to Section 149 of the Civil Procedure Code, which refers to power to make up deficiency of court fee and held thus:

“6. It also needs to be emphasized that this Court as well as various High Courts, have held that Section 149 CPC acts as an exception, or even a proviso to Section 4 of Court Fees Act 1870. In terms of Section 4, an appeal cannot be filed before a High Court without court fee, if the same is prescribed. But this provision has to be read along with Section 149 of CPC which we have referred above. A short background to the incorporation of Section 149 in CPC would explain this aspect.

7. ...

8. ...

9. *In Mannan Lal (supra), this aspect was dealt in rather detail, where the Court referred to several decisions of different High Courts on interpretation of Section 149 CPC and Section 4 of Court Fees Act. It particularly referred to the decision of the Allahabad High Court which is S. Wajid Ali v. Mt. Isar Bano Urf Isar Fatima wherein*

it was held that a court has to exercise its discretion for allowing a deficiency of court fees to be made good but once it was done, a document was to be deemed to have been presented and received on the date when it was originally filed, and not on the date when the defects were cured.

10. ...

11. We do not have a case at hand where the appellant is not capable of purchasing the court fee. He did pay the court fee ultimately, though belatedly. But then, under the facts and circumstances of the case, the reasons assigned for the delay in filing the appeal cannot be a valid reason for condonation of the delay, since the appellant could have filed the appeal deficient in court fee under the provisions of law, referred above. Therefore, we find that the High Court was right in dismissing Section 5 application of the appellant as insufficient funds could not have been a sufficient ground for condonation of delay, under the facts and circumstance of the case. It would have been entirely a different matter had the appellant filed an appeal in terms of Section 149 CPC and thereafter removed the defects by paying deficit court fees. This has evidently not been done.”

(Emphasis now)

4. Thus, the Supreme Court has held that the applicants/appellants therein could have filed the appeal deficient in court fee and made good subsequently. Nothing prevented the applicants herein from adopting such a mode.

5. At this stage, learned counsel for the applicants has made a request to condone delay by imposing costs.

Even such recourse is impermissible. The Supreme Court in the case of ***Basawraj and Anr. V/s The Spl. Land Acquisition Officer, [AIR 2014 SC 746]*** held 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.”

6. Thus, the Supreme Court has held that no Court could be justified in condoning delay by imposing any condition whatsoever. The Supreme Court further held that the application is to be decided only within the parameters laid down by it in regard to the condonation of delay and 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. Therefore, to allow the present application by imposing cost will amount to passing an order in violation of the statutory provision i.e. Section 5 of the Limitation Act.

7. Another relevant judgment which will have bearing on the outcome of present application is in the case of ***Ramlal V/s Rewa Coalfields Ltd. [AIR 1962 SC 361]*** wherein the Supreme Court, while interpreting Section 5 of the Limitation Act, held thus :

“In construing Section 5 (of the Limitation Act), it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired, the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be lightheartedly disturbed.”

8. Thus in absence of sufficient cause, legal right which has accrued in favour of decree holder cannot be lightheartedly disturbed. The decree holder herein i.e. respondent is waiting for fruits of the decree despite being successful before both the Courts below. The delay has resulted in accruing legal right in favour of respondent to enforce the decree. This right cannot be lightheartedly disturbed. The cause put forth by the

applicant is not sufficient to disturb the legal right accrued in favour the respondent.

9. Thus the reasons put forth for condoning delay, if are examined in the light of the judgments quoted hereinabove, the only inference which follows is that the applicants were negligent and have thus not acted diligently in pursuing their own cause. They remained inactive for no justified reasons. There is thus no cause, much less, sufficient cause to condone delay. The application is accordingly rejected.

(Anil L. Pansare, J.)

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