



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

Second Appeal No. 202 of 2023

[Shri Pradip S/o. Motiramji Shende ..vs.. Sau. Bebibai W/o. Ratanrao Lakshane]

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

Court's or Judge's orders

Mr. J. R. Kidilay, Advocate for the appellant
Mr. M. R. Joharapurkar, Advocate for the respondent

CORAM : ANIL L. PANSARE J.

DATED : 23-01-2024

The appellant is aggrieved by the order dated 14-3-2022 passed by the learned District Court, Nagpur in Misc. Civil Application No. 305/2018 thereby rejecting the request to condone delay of 345 days in filing appeal against the judgment and decree dated 27-3-2017 passed by learned 7th Joint Civil Judge Junior Division, Nagpur in Regular Civil Suit No. 1637/2012.

2. Having heard both sides and having gone through the order impugned, it is evident that the appellant has suppressed crucial facts and made an attempt to get favourable order from the first appellate Court which has been rightly thwarted by the first appellate Court.

3. The appellant has put forth a case that on 31-1-2018, he received show cause notice sent by the trial Court in Regular Darkhast No. 282/2017 and at that moment, for the first time, he came to know about the passing of impugned judgment and decree. Thereafter he contacted his counsel who represented him in the suit before the trial Court and took back the entire case papers for taking further steps. He then approached the

present Advocate and filed appeal and in doing so, there occurred delay of 345 days. The appellant blamed his earlier counsel for not informing him of the judgment passed and took back the case papers.

4. The application was opposed on the ground that the appellant was present at the time of final hearing and thus was well aware of passing of judgment and decree. The respondent has then pointed out that the appellant has not even explained the delay that has occurred post 31-1-2018 because he has not given any reason as to what prevented him from filing application immediately after getting knowledge of the impugned judgment on 31-1-2018. The application has been filed before the first appellate Court on 10-4-2018.

5. The first appellate Court considered the rival submissions and has taken note of the documents filed by the appellant along with the application. One of such documents is Exhibit 11 which is a notice dated 6-7-2017 sent by the respondent calling upon the appellant to execute the sale deed. The said notice was not claimed by the appellant. The first appellate Court has then taken note of the certified copy of the impugned judgment annexed with the application. The certified copy was received on 1-6-2017. It is/was not the case of the appellant that his Advocate has delivered this certified copy along with case papers to him. It is not even his case that he has collected certified copy of the judgment from his previous Advocate nor has he explained as to who has applied for certified copy and who has received the same.

6. The first appellate Court therefore held that the documents filed by the appellant himself would falsify his case of date of knowledge of passing of the impugned judgment. It further appears that the appellant has not even denied the statement made by the non-applicant that he was continuously present during the suit and has attended the trial Court on the date when arguments were advanced.

7. Thus the conduct of the appellant is such that he did not claim the notice sent by the respondent to comply with the decree. He has not given any explanation as to how did he receive certified copy of the impugned judgment on 1-6-2017 when he claimed that he got to know of the impugned judgment for the first time on 31-1-2018. The appellant has further not given any explanation of the delay that has occurred for the period from 31-1-2018 to 10-4-2018.

8. Learned counsel for the appellant has relied upon the judgment of the Supreme Court in the case of *Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai [2012(3) ALL MR 450 (S.C.)]*. The Supreme Court in paragraph no. 15 referred to its earlier judgment on the point of parameters to be applied while considering the application for condonation of delay. The Supreme Court held in paragraph no. 15 as under.

“15. In N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123, the Court went a step further and made the following observations :

“It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter; acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for

launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.”

9. The emphasis of the learned counsel is on the observations made by the Supreme Court that rules of limitation are not meant to destroy the rights of the parties and they are meant to see that parties do not

resort to dilatory tactics but seek their remedy promptly. The Supreme Court has also noted that in every such application, there can be some lapse on the part of the litigant concerned and that alone is not enough to turn down his plea and to shut the door against him.

10. I have carefully gone through the said judgment. Apart from the fact that even in paragraph no. 15, the Supreme Court held that when there is a reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the explanation, the Court further held that if the explanation offered is found to be concocted and if the applicant is found to be thoroughly negligent in presenting its cause, delay cannot be condoned.

11. In the present case and as stated earlier, the appellant did not claim the notice sent by the respondent. The appellant has then conveniently omitted to disclose the material particulars as regards obtaining certified copy, which he has obtained on 1-6-2017. Despite such status, he has raised a plea that he came to know of passing of impugned judgment for the first time on 31-1-2018, which claim was falsified by his own document viz. certified copy of the impugned order. The appellant has blamed previous Advocate of not informing him of passing of the judgment but without making him party non-applicant. Nonethelss, his failure to explain as to how did he receive certified copy on 1-6-2017 has rendered his claim inadmissible.

This is, therefore, not a case where the lapses committed by the appellant could be or should be ignored.

12. One cannot lose sight of the fact that upon expiration of period of limitation prescribed for making an appeal, would give rise to right in favour of the decree holder to treat the decree as binding between the parties and once, this right is accrued in favour of decree holder, it could only be disturbed upon sufficient cause shown by the appellant for not approaching the Court within the prescribed time. No perversity is thus found in the judgment of the first appellate Court. There is no question of law or substantial question of law involved in the second appeal. The second appeal is, therefore, dismissed.

(Anil L. Pansare, J.)