



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 WRIT PETITION NO. 3310 OF 2024

RATNABAI LAXMAN WANI THROUGH POA LAXMAN JAGANNATH WANI
VERSUS
LATABAI BAPURAO PATIL

Mr. Bhushan Mahajan, Advocate for the petitioner
Mr. S. H. Tripathi, Advocate for the respondent.

CORAM : R. M. JOSHI, J.

DATE : 27th FEBRUARY, 2025

PER COURT :-

1. Judicial system in India is more often than seldom mocked with criticism that it is absolutely difficult to get a decree and impossible to execute the same. This is a classic example as to how dishonest litigant can deny the fruits of the decree to the successful plaintiff for a period over 14 years.

2. Petitioner filed suit being R.C.S. No. 2/2009 against respondent/defendant for removal encroachment from the plot No. 23A belonging to plaintiff. Undisputedly plot No.23B is owned by defendant and she is adjoining owner to the plaintiff's plot. In R.C.S. No. 2/2009 the summons duly served to the defendant. Defendant appeared however thereafter no written statement is filed and the suit was not contested. The suit came to be decreed on 31/07/2010. Since there was

no appeal preferred by the defendant therein, Regular Darkhast bearing No. 4/2010 came to be filed for execution of the said decree. Defendant/judgment debtor/respondent herein appeared in the said darkhast and contested the same. It is thereafter respondent filed R.C.S. No. 10/2011 challenging the judgment and decree passed in R.C.S. No. 2/2009 with allegation that the said decree is obtained by fraud. The allegation in the said suit is about alleged collusion between plaintiff and the survey authorities and no allegation indicating obtainment of decree by itself on playing fraud on Court or other party. Though such suit filed by the respondent, respondent was not interested in prosecuting the same and ultimately after a period of 11 years it was allowed to stand dismissed for want of prosecution on 01/02/2022. It is after 11 months thereof, an application came to be filed before the First Appellate Court for seeking condonation of delay in filing the appeal against the judgment and decree dated 31/07/2010 passed in R.C.S. No. 2/2009. In the said application being Civil M.A. No. 603/2022 respondent has claimed that she did not have knowledge about the stages of the proceeding before the Trial Court and as her husband has not informed her about the engagement of the lawyer, and that no instructions were given by her to the Advocate etc. It is specifically claimed that as on the date of filing of application she is owner and in possession of plot no.23B. With these averments delay of more than 12 years was sought to be

condoned.

3. This application was opposed by original plaintiff/petitioner herein. Apart from denying the contentions of the respondent before First Appellate Court, documentary evidence is brought on record before this Court indicating that the respondent herein had suppressed material facts from Court below and in fact made false statement. The document on record indicates that before filing of the application for condonation of delay in filing of the appeal, the respondent had executed a gift deed in favour of her daughter however till she claimed herself to be owner of said property.

4. The First Appellate Court condoned the extra ordinary delay of more than 12 years with observation that the cost of Rs.20,000/- would be sufficient and justified for condonation thereof. The Court has accepted the contention of respondent without there being any specific averments or proof thereof.

5. Learned counsel for the petitioner has drawn attention of the Court to the relevant facts which are recorded herein above. It is is contention that apart from the fact that on merit the application ought to have been dismissed by the First Appellate Court, he has drawn attention

of the Court to the fact that a false statement was made by the respondent before the First Appellate Court to the effect that she is owner and in possession of plot No.23B though in fact she had gifted the said plot to her daughter much before filing of this application. It is thus his contention that the party which does not appear before the Court with clean hand is not entitled for any discretionary relief.

6. Learned counsel for the respondent made feeble attempt to support the impugned order by contending that the respondent is a lady and that her husband died on 04/10/2017 after he suffered cancer. It is his submission that the First Appellate court has taken into consideration these aspects and has allowed the application and as such there is no reason to cause interference in order impugned.

7. Before allowing the application for condonation of delay, it was absolutely necessary for the First Appellate court to consider as to whether there is any sufficient and justified reason made out for the condonation of delay and if only such reason is substantiated then Court could have considered condonation thereof. The delay condonation application cannot be allowed mechanically and only on sympathetic grounds.

8. Though respondent herein is lady, the fact as they appear from the record shows that there was deliberate attempt on her part to ensure that the decree in favour of the petitioner/plaintiff passed in the year 2010 is not executed. These observations are inevitable in view of the facts of the case. Admittedly, in R.C.S. No. 2/2009 respondent was duly served she appeared, however, in spite of causing appearance before the Court, she did not contest the suit. It is not the case that she had no knowledge the passing of the judgment and decree dated 31/07/2010 in R.C.S. No. 2/2009. This fact is abundantly clear from her appearance in Regular Darkhast No. 4/2010 filed by plaintiff therein for execution of decree. Applications were moved which came to be decided by the Execution Court against her.

9. In the light of these facts, even after the knowledge of the said judgment respondent does not care to file appeal but files R.C.A. 10/2011 with averment that the decree is obtained by fraud. Perusal of the copy of the plaint in the suit indicates that there is absolutely no averment with regard to the obtainment of decree as such by fraud on Court or party to the suit. However a vague allegation is made that the plaintiff was in collusion with the survey authority. Apart from the fact that apparently there was no substance in the said suit filed by the respondent, the respondent herein was never really interested in

pursuing the same. It is pertinent to note that though the said suit is filed in the year 2011, but for the period over 10 years the respondent did not wish to pursue the same. The suit ultimately came to be dismissed on 01/02/2024. This fact also clearly indicates the mala fide intention of the respondent in filing the proceeding before the Court and not prosecuting the same with sole intention that the execution of the decree in favour of the petitioner is not done.

10. It is thereafter application came to be filed on 05/11/2022 with vague averment that the husband of the respondent did not inform about her of the Advocate engaged on her behalf. It is also vaguely stated that during the relevant time her husband was suffering from cancer and thereafter he died in year 2017. It is also claimed that respondent is illiterate. Though such averments are made, except for identity card issued by the Cancer Hospital which is of year 2016, there is absolutely no evidence placed before the First Appellate Court to substantiate the inordinate delay caused in filing of the appeal. As observed above, the First Appellate Court has mechanically without satisfying itself of sufficiency of reasons and only on sympathetic ground allowed the application, which is wholly impermissible in law.

11. Allowing such application in favour of dishonest litigant would

amount to grant license to unscrupulous person to approach to the Court deliberately after laps of considerable time and thereby causing obstruction to execution of decree and denying fruits thereof to the successful plaintiff. In such the facts and circumstances of the case, the First Appellate Court ought to have dismissed the application with exemplary cost.

12. It is the contention of the learned counsel for the petitioner that on wrong advice the wrong remedy is pursued before the wrong forum and hence under Section 14 of the Limitation Act the period lapsed in between needs to be excuse. To support his submission he placed reliance on the judgment of this Court in case of ***Pattherao Narsu Patil @ Rajaram Dnyanu Patil Vs. Gangubai A. Lad and others, 2019(3) Mh.L.J., 121***. It is high time that such causal reason given by the parties of wrong legal advice without substantiation thereof is to be accepted or not. It is often seen that though such allegations are made there is absolutely no material to show that any action has been initiated against such wrong advice. When such unsubstantiated plea is raised malafide with sole intention to get order of condonation of delay the same is required to be rejected by imposing cost.

13. Hence, petition stands allowed. M.C.A. No. 603/2022 filed

before First Appellate Court filed for condonation of delay in filing appeal stands dismissed with cost of Rs.20,000/-. Petitioner is permitted to withdraw amount of Rs.20,000/- deposited by respondent before the District Court.

(R. M. JOSHI, J.)

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