

(2009) 10 BOM CK 0079

In the Bombay High Court

Case No : Writ Petition No. 3544 of 2005

Ashishkant Prabookant Sen and Others

APPELLANT

Vs

Jagoba Dashrath Jibhkate and Others

RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1
Limitation Act, 1963 — Section 5

Citation : (2010) 1 BomCR 838 : (2010) 2 MhLj 338

Hon'ble Judges : Chaudhari A.B., J

Bench : Single Bench

Advocate : Girish Chaubey, for the Appellant; Saoji, h/f., Anand Parchure, for Respondent Nos. 10, 11, 12, 15 and 16, for the Respondent

Judgement

Chaudhari A.B., J.—Rule. Rule returnable forthwith. Heard finally by consent of parties.

2. In the present writ petition, there is a challenge to the order dated 15/4/1993, passed by the Additional District Judge, Nagpur, in Misc. Civil Application No. 278/1990, filed in a Miscellaneous Appeal under Order 43, Rule 1(d) of C.P.C., whereby the Appellate Court dismissed the application for condonation of delay of 6? months in filing the appeal before the Appellate Court.

3. In support of the writ petition, Mr. Girish Choube, learned Counsel for the petitioner argued that there was a delay of 6? months and that was explained in paragraph Nos. 2, 3 and 4 of the application for condonation of delay. The Appellate Court has in Paragraph Nos. 5 found that those reasons were not sufficient in order to satisfy the requirement of Section 5 of Limitation Act.

4. The contesting respondents are absent. Mr. Saoji, Advocate, appears for respondent Nos. 10, 11, 12, 15 and 16.

5. Having heard learned Counsel for the parties, and having seen the impugned order, I find that the reasons furnished by the petitioner in the application and in

particular, paras 2, 3 and 4 of the application, are quite satisfactory. Some of the petitioners are residing at different and distant places and there is nothing wrong in awaiting the approval of each party for filing the appeal. At any rate, the delay of 6? months is not too much to throw out the matter, without deciding the same on merits. The Appellate Court could have compensated the other side by making an order of costs to be paid to the contesting respondents before him. However, now I am not inclined to award any costs.

6. Mr. Choube, learned Counsel for the petitioner also relied on the decision of the Supreme Court and argued that the Court could not have touched the merits of the matter while deciding the application for condonation of delay. The point is no more *res integra*.

7. In the result, I make the following order. The impugned order dated 15.4.1993 made by the Additional District Judge, Nagpur, is set aside. M.C.A. No. 278/90 is allowed. Delay in filing the appeal is condoned. The Misc. Civil appeal shall be restored and registered and shall be taken up for final hearing after issuing notices to all the concerned parties.

Writ petition is accordingly disposed of.