
(2013) 02 BOM CK 0211

In the Bombay High Court

Case No : Civil Application (CAF) No. 1049 of 2012 in S.A. No. 343 of 2001

Ashok Maheshkar

APPELLANT

Vs

Gangadhar Phadnavis and Others

RESPONDENT

Date of Decision : 15-02-2013

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2013) 2 MhLj 497

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : R.L. Khapre, for the Appellant; S.P. Bhandarkar, for the Respondent

Final Decision : Allowed

Judgement

R.K. Deshpande, J.—Heard Shri R.L. Khapre, the learned counsel for the applicant; and Shri S. P. Bhandarkar, the learned counsel for the non-applicant/respondent No. 1. This application is u/s 5 of the Limitation Act for condonation of 216 days" delay caused in filing an application for bringing the names of the legal representatives of the sole appellant/plaintiff on record. The appellant/plaintiff died on 28-11-2011. Within a period of 90 days from the said date, the legal representatives of the appellant/plaintiff were required to be brought on record, and within a further period of 60 days, the application for setting aside the abatement was required to be filed. Thus, the delay was required to be explained after the expiry of 150 days from 28-11-2011. Two reasons are assigned for seeking condonation of delay, namely - (i) that the appellant/plaintiff had engaged Shri C. P. Sen, Advocate, to conduct the matter and he was not well; and (ii) that the interest of the appellant/plaintiff was being looked after by his elder brother Shri Vasant Rao Lalaji Maheshkar, and the applicant was not aware of the pendency of the appeal filed by her father-appellant/plaintiff.

2. The application is vehemently opposed on the ground that the period of 216 days has not at all been explained and the reason of illness of the counsel put forth to explain some part of delay, was totally false and not bona fide. It is

urged that the event of sickness of the appellant/plaintiff, narrated in the application, is of the period prior to his death on 28-11-2011, and hence the same is totally irrelevant.

3. It is true that the appellant/plaintiff died on 28-11-2011, and Shri C. P. Sen, the learned counsel for the appellant/plaintiff, was admitted in the hospital for the first time on 14-5-2011. However, that by itself is not enough to hold that the reason assigned is totally false and that there is absolutely no explanation for condonation of delay caused after expiry of 150 days from 28-11-2011. While considering the application for condonation of delay, the contents of the application have to be read as a whole without separating the stray sentences here and there. The expression "sufficient cause" u/s 5 of the Limitation Act is required to be construed liberally by adopting a practical and pragmatic approach rather than adopting a pedantic and technical approach. It is not expected of the litigant to explain every day's delay. What is required to be explained is the delay spread over for number of days. Falsity of claim to seek condonation of delay and accruing of third-party rights because of such delay, are the factors, which operate by way of exception prompting rejection of the application for condonation of delay.

4. In para 2 of the application, it is stated that the counsel Shri C. P. Sen was operated on 14-5-2011. Before actual recovery, he was again operated for prostate on 18-6-2011. Thereafter he was kept on ventilator for 20 days. He was thereafter taken to Apollo Hospital at Hyderabad for 17 days, and on his return, he was admitted in Wockhardt Hospital for two days. Subsequently, he was shifted in Aditya Critical Care Unit for 8 days, and thereafter in Tambe Critical Care Unit for one week. Due to illness, he became weak and fragile. He was completely bedridden and unable to walk. He was under nursing for 2 to 3 months. In para 4, it is stated that the cause for delay is the sickness of the Senior Counsel Shri C. P. Sen. These facts are not at all disputed, though reply is filed opposing the application for condonation of delay. The necessary inference, which can be drawn from uncontroverted factual position, is that the sickness of the counsel was spread over from 14-5-2011. It is not the case that the counsel has recovered and has filed the application for condonation of delay. In view of this, merely because the counsel was admitted initially on 14-5-2011, that is prior to the death of the appellant/plaintiff on 28-11-2011, will not make any difference. There is no falsity in the claim, nor it is shown that any third-party rights have accrued because of the delay in filing the application. Hence, no case is made out to reject the application either on the ground of falsity of claim or on the ground of lack of bona fides.

5. In view of above, I am satisfied that a sufficient cause is made out for condonation of delay by explaining the entire period. Similarly, the additional reason is stated by the applicant that she was not aware of the litigation pending before this Court, as it was being looked after by Shri Vasantrao Lalaji Maheshkar, the elder brother of the appellant/plaintiff. The application, therefore,

needs to be allowed. Hence, the civil application is allowed. The delay caused is condoned. The matter to proceed further.