
(2010) 09 BOM CK 0071

In the Bombay High Court

Case No : Writ Petition No. 1423 of 2010

Chandrakant Patil and Others

APPELLANT

Vs

Vikas Parsewar

RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2011) 1 ALLMR 126 : (2011) 2 MhLj 94

Hon'ble Judges : Shrihari P. Davare, J

Bench : Single Bench

Advocate : S.S. Halkude, for the Appellant; P.S. Dighe, h/f., V.R. Dhorde, for the Respondent

Final Decision : Dismissed

Judgement

Shrihari P. Davare, J.—Heard Shri S.S. Halkude, learned Counsel for the petitioners-original applicants and Shri P.S. Dighe, learned Counsel for the respondent-original respondent.

2. Rule. Rule made returnable forthwith and with the consent of learned Counsel for the parties, petition is taken up for final hearing at admission stage.

3. The petitioners-original applicants have challenged the order dated 27.11.2009, passed by the learned II Joint Civil Judge, Junior Division, Latur, in Miscellaneous Application No. 274 of 2007, thereby rejecting the present petitioners' application for condonation of delay, and prayed for quashment thereof.

4. The applicants-petitioners herein had filed R.C.S. No. 589 of 2004 in the court of Civil Judge, Senior Division, Latur, against the respondent herein, for specific performance and re-conveyance and for possession of the suit land. The said suit was initially transferred to the court of Joint Civil Judge, Junior Division, Latur and subsequently to the court of 4th Joint Civil Judge, Junior Division, Latur. The petitioners-applicants had engaged one Shri K.N.Patil as their Advocate in the

said suit. However, it is the contention of the applicants-petitioners herein that their lawyer could not get the date of hearing of the said suit inadvertently and, therefore, consequently the said suit came to be dismissed in default on 19.7.2006.

5. It is also the contention of the petitioners that present petitioner No. 1 was in charge of the said suit and on 12.9.2007, he came to know about dismissal of the said suit. Thereafter, he immediately applied for certified copy of order of dismissal of the suit, which was received by him on 27.9.2007 and thereafter he preferred application i.e. Miscellaneous Application No. 274 of 2007 for condonation of delay of about 1 year, 2 months and 14 days, along with application for setting aside the dismissal order dated 19.7.2006, on 3.10.2007. The contentions of the petitioners-applicants are that, the said delay was not wilful, deliberate and intentional and the lawyer of the applicants had not informed them the date of hearing of the said suit and, therefore, the litigant should not suffer for inadvertence or folly on the part of his advocate and also that the suit involves valuable stake, as well as the applicants were not negligent.

6. The Respondent has filed the say at Exhibit 17 to the said applicant and denied the averments therein. It was also contended that the suit was pending since 2004 and the respondent denied that the applicants' lawyer had no knowledge of the date of the said suit and also contended that none of the applicants appeared in the matter on 19.7.2006 and, therefore, the suit was dismissed on 19.7.2006. It was also contended by the Respondent that, petitioner No. 1 origi. applicant No. 1 himself is a lawyer and attends the court regularly and was in contact of their Advocate in the suit. It is submitted that delay of more than one year is inordinate and the said delay was not explained properly and the applicants failed to give sufficient cause for condonation of delay. Accordingly, it is submitted that the application for condonation of delay bears no substance and hence, same deserves to be rejected.

7. After considering rival contentions, learned II Joint Civil Judge, Junior Division, Latur, rejected the said application, on 27.11.2009, and being aggrieved and dissatisfied by the order of rejection, the applicants-petitioners herein have impugned the same in the present writ petition and prayed for quashment thereof.

8. Shri S.S. Hadkule, learned Counsel for the petitioners, submitted that the delay of one year, 2 months and 14 days caused in filing the application for condonation of delay along with application for setting aside the order of dismissal of the suit, is not wilful, deliberate and intentional and same was caused due to inadvertence/negligence of the Advocate and the applicants-petitioners herein should not suffer for the mistake or folly of their Advocate. Learned Counsel for the petitioners also canvassed that the petitioners-applicants have pleaded and put forth sufficient cause for the aforesaid delay and the said delay, which was not inordinate, should have been condoned by the trial court in the interest of justice, having liberal approach and broader perspective.

9. In the said context, learned Counsel for the petitioners relied upon the observations made by the Apex Court in the case of *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, , which reads as under;

It is clear that the words "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party.

10. Shri S.S. Hadkule, learned Counsel for the petitioners, further canvassed that, initially, the said R.C.S. No. 589 of 2004 was filed before the Civil Judge, Senior Division, Latur and subsequently, it was transferred to the court of Joint Civil Judge, Junior Division, Latur, and further submitted that it was again transferred to the court of 4th Joint Civil Judge, Junior Division, Latur and Advocate Shri K.N. Patil, appearing on behalf of the applicants, did not receive any notice in respect of transfer of the said suit and, therefore, the applicants and their Advocate were unaware about the transfer of the said suit which, ultimately, resulted in dismissal thereof.

11. Learned Counsel for the petitioners further submitted that after transfer of the said suit from one court to another, the authority of the Advocate in the original court comes to an end and since the applicants-petitioners herein did not receive any notice from the court in respect of the transfer of the said suit, they were unaware about the stage and position of the said suit which, as stated earlier, resulted into dismissal thereof for which, the applicants were not negligent and, therefore also, the application for condonation of delay should have been allowed by the trial court.

12. In the said context, learned Counsel for the petitioners, relied upon the observations made in the case of *Krishnaji Mahadeo Bapat Vs. Wamanrao Balwantrao Shinde and Another*, , which are to following effect;

If the suit or the proceeding is transferred from one court to a totally distinct Court, the authority of an advocate in the original court would come to an end. All Vakalatnamas and appearances are filed for a particular Court. It is for a suit or the proceedings in that Court that the Advocate is authorised to and obliges himself to appear. Neither the client nor the advocate can be bound by that authority given with reference to a particular Court if the proceedings are transferred to a different Court.

13. Accordingly, learned Counsel for the petitioners-applicants urged that the aforesaid aspects were not considered by the learned trial judge, while rejecting the application for condonation of delay and hence, the impugned order dated 27.11.2009 passed by the learned trial judge deserves to be quashed and set aside.

14. Shri P.S. Dighe, learned Counsel for the Respondent, opposed the present petition, vehemently and submitted that, the delay of 1 year, 2 months and 14 days caused in filing application for condonation of delay is wilful, deliberate and

intentional and certainly it is inordinate and, therefore, same was not condoned by the learned trial judge, rightly. It is also submitted by the learned Counsel for the respondent that present petitioner No. 1 himself is a practising lawyer and notary public and attends the court regularly and, therefore, he cannot take shelter that his lawyer Mr. K.N. Patil did not inform him about the date of the said suit.

15. Shri Dighe, learned Counsel for the respondent, further canvassed that the applicants have failed to plead and prove sufficient cause for condonation of delay and, therefore, according to learned Counsel, the learned trial judge has rightly rejected the application of the present petitioners-original applicants and no interference therein is warranted, in exercise of writ jurisdiction.

16. In the said context, learned Counsel for the Respondent, relied upon the case of Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another, , wherein it is held as under;

14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression "sufficient cause" employed in Section 5 of the Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Although, no hard-and-fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.

17. Accordingly, learned Counsel for the respondent urged that the present petition bears no substance and is devoid of merits and, therefore, same be rejected.

18. After considering rival submissions advanced by learned Counsel for the parties and also on perusal of the contents of the impugned order dated 27.11.2009, it is seen that original applicant No. 1 has led his evidence in Miscellaneous Application No. 274 of 2007 and in his cross examination, he has admitted that he is a practising lawyer and notary public and attends the court regularly. He has also admitted that he himself did not try to collect the date of the suit. Considering the said admissions by applicant No. 1, it appears that, although he is a practising lawyer and attends the court regularly, he himself did not try to collect the date of the suit and, therefore, it is apparent that applicant

No. 1 was not diligent. As a litigant, it was the bound ended duty of applicant No. 1 to be abreast with his litigation and progress thereof, in which, apparently, he failed.

19. As regards the evidence of the applicants' witness i.e. Advocate Shri K.N. Patil who was holding brief for the applicants, he stated that his clerk has not obtained date in his diary and, therefore, he was unaware about the date of the hearing of the suit. He further stated that he also enquired with the concerned court clerk, but he did not provide any date of hearing. In the said context, learned trial judge has rightly observed that computerized system is installed in the court to ascertain the date and stage of the matter. It is also observed that although the Advocate for the applicants blamed his clerk for his own inadvertence, the said clerk has not been examined before the trial court to strengthen the said proposition. Learned trial judge has also rightly observed that vital piece of evidence i.e. Advocate's diary in respect of the concerned period, was not produced before the court, which also hampers the case of the applicants-petitioners herein.

20. As regards observations made in Krishnaji Mahadeo Bapat Vs. Wamanrao Balwantrao Shinde and Another, relied upon by the learned Counsel for the petitioners, it appears that the facts in the said case differ from the facts in the case on hands, since in the cited case, the suit was filed in the court of Civil Judge, Senior Division, Chiplun and thereafter, by an order of the District Court, it was transferred to the court of Civil Judge, Senior Division, Khed which is a different place, but so is not the position in the instant case wherein, suit was transferred from the Court of Civil Judge, Senior Latur, to the court of 4th Joint Civil Judge, Junior Division at Latur itself and hence, the observations made in the said case cannot be of any aid and assistance to the case of the petitioners herein. As regards observations in another case cited by petitioners, i.e. The State of West Bengal Vs. The Administrator, Howrah Municipality and Others, , same also cannot come to the rescue of the petitioners, since petitioner No. 1 herein (orig. applicant No. 1) was negligent as discussed hereinabove.

21. Moreover, on perusal of the contents of Miscellaneous Application No. 274 of 2007, it appears that, although the petitioners averred in the said application that applicant No. 1, who was in charge of the said suit on behalf of the applicants-petitioners herein, for the first time he came to know on 12.9.2007 that the suit of the applicants was dismissed for default on 19.07.2006, but it is significant to note that the applicants-petitioners herein have nowhere stated in the said application as to how and from which source applicant No. 1 has got knowledge on 12.9.2007 of dismissal of suit on 19.7.2006.

22. Besides that, delay occurred in present case is about 1 year two months and fourteen days, which is certainly inordinate delay and same has not been explained and accounted for by the Petitioners properly. Hence, stricter approach is required to be adopted while considering the same, relying upon the observations made by Hon. Supreme Court in the case cited by Respondent

(supra).

23. In the circumstances, having the comprehensive view of the matter, and considering the impugned order dated 27.11.2009, no perversity is found therein, and therefore, this is not a fit case to interfere therein under writ jurisdiction, and hence, present petition deserves to be dismissed.

24. In the result, present petition being sans merits, stands dismissed. Rule stands discharged, accordingly.