
(2014) 12 BOM CK 0248
In the Bombay High Court
Case No : Writ Petition No. 752 of 2014

Kashi Babuli Chari

APPELLANT

Vs

Sheetal Shivram Chari and Others

RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Citation : (2015) 4 BomCR 610

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : Nitin Sardessai, Senior Advocate and Deep Shirokar, Advocate for the Appellant; Sarvesh Kamat Mayenkar, Advocate for the Respondent;

Final Decision : Disposed off

Judgement

F.M. Reis, J.

1. Heard Shri Nitin Sardessai, learned Senior Counsel appearing for the petitioner and Shri Mayenkar, learned Counsel appearing for the respondents. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the respondents, waives service.

2. The above petition challenges the Order passed by the learned District Judge-I, Mapusa, in Civil Misc. Application No. 4 of 2014, whereby an application for condonation of delay filed by the petitioners praying for review of the judgment/ Order and Decree dated 20.5.2013, came to be dismissed.

3. Shri Nitin Sardessai, learned Senior Counsel appearing for the petitioner, has pointed out that the petitioner is more than 85 years old and is a fruit vendor in the market and, as such, did not understand the exigencies of the legal procedures. Learned Senior Counsel further pointed out that besides her old age, the petitioner was also sick and confined to bed on account of hyper tension and diabetes which also prevented her from taking necessary steps to challenge the impugned judgment. Learned Senior Counsel further pointed out that it is the case of the petitioner that the petitioner was not given an adequate hearing at

the time of the appeal which, according to him, would require a review before the same Court. Learned Senior Counsel further pointed out that the learned Judge has misconstrued the material produced on record in support of the case of the petitioner that there was a sufficient cause by discarding the medical certificate produced by the petitioner. Learned Senior Counsel further pointed out that considering the feeble stature of the petitioner, the delay deserves to be condoned in the interest of justice.

4. On the other hand, Shri Sarvesh Kamat, learned Counsel appearing for the respondents, has supported the impugned Order. The learned Counsel further pointed out that the petitioner has not shown any sufficient cause which would entitle her to get the delay condoned. The learned Counsel further submits that the medical certificate itself does not disclose that the petitioner was subjected to any bed rest besides the fact that the petitioner had other means to take necessary steps to challenge the Judgment passed by the learned Judge. The learned Counsel has taken me through the impugned Order and pointed out that the learned Judge has rightly examined the affidavit as well as the documents produced by the petitioner to come to the conclusion that no sufficient cause has been shown by the petitioner. Learned Counsel as such submits that the above petition be rejected.

5. I have duly considered the submissions of the learned Counsel and I have also gone through the records. The fact that the petitioner is of old age of more than 80 years and the medical certificates show that she had an ailment has not been disputed by the respondents. No doubt, the medical certificate produced is not appreciably worded, but however, the fact that the petitioner was suffering from diabetes and hyper tension can be accepted from the material on record. In the reply filed by the respondent, besides denials, there is nothing attributed to the petitioner to suggest that she has acted mala fide or that the delay in any way has improved her position with regard to the subject dispute. These factors examined cumulatively, would suggest that the explanation tendered by the petitioner is plausible in the facts and circumstances of the case. Though the learned Judge has examined the material on record to come to the conclusion that no sufficient cause has been established, nevertheless, the material on record in fact suggests that there was no deliberate attempt on the part of the petitioner to approach the Court belated and she had not acted bona fide.

6. It is well settled that the Court should normally decide the disputes on merits and construe the word "sufficient cause" liberally in the interest of justice. In the present case, taking note of the fact that the petitioner was of old age and for the reasons stated herein above and, in the interest of justice, the learned Judge ought to have condoned the delay and considered the application for review of the Order in accordance with law. No doubt, the respondents would have to be compensated by costs. Taking note of the statement of the petitioner as pointed out by the learned Senior Counsel appearing for the petitioner, I find that the costs deserves to be moderately quantified at Rs. 2,500/-.

6-A. In view of the above, I find that the impugned Order passed by the learned Judge deserves to be quashed and set aside and the delay in filing the review petition be condoned subject to payment of costs to Rs. 2,500/- as referred to herein above.

Consequently, I pass the following:

ORDER

(I) The impugned Order dated 9.7.2014 is quashed and set aside. The delay in filing the review is considered subject to the payment of costs of Rs. 2,500/- as condition precedent to the respondents.

(II) Rule stands disposed of in the above terms.

(III) The parties are directed to appear before the learned Judge on 9.1.2015 at 10.00 a.m.