

(2021) 06 BOM CK 0050
In the Bombay High Court
Case No : Writ Petition No. 7532 Of 2019

Kumkum D/O Late Sachindranath Chakravorty	APPELLANT
Vs	
Rahul S/O Ramesh Mahajan	RESPONDENT

Date of Decision : 14-06-2021

Acts Referred:

Citation : (2021) 06 BOM CK 0050

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : P. S. Mishra, S.K.Paunikar

Final Decision : Partly Allowed

Judgement

Manish Pitale, J

1. conferencing and the learned counsel agreed that the audio and visual quality was proper.
2. Heard learned counsel for the parties.
3. The petitioner has challenged order dated 04/10/2019 passed by the Court of District Judge-9, Nagpur, whereby Miscellaneous Civil Application No.208 of 2019 being an application for condonation of delay in filing appeal, has been allowed and delay of 2362 days in preferring the appeal by the respondent has been condoned.
4. The petitioner herein had filed a suit for specific performance against the respondent herein in respect of a suit shop. The Trial Court granted ex parte decree in favour of the petitioner on 17/07/2012. In pursuance of the said ex parte decree passed in favour of the petitioner, the Assistant Superintendent of the Trial Court was appointed for executing and registering the sale deed through the Court in terms of the aforesaid decree.

5. The respondent woke up after a huge delay and approached the District Court at Nagpur after 2362 days of delay to file appeal in order to

challenge the ex parte passed decree in favour of the petitioner. Although the application for condonation of delay mentions delay of 263 days, it is an

admitted position that the appeal suffered from delay of 2362 days.

6. By the impugned order, the aforesaid Appellate Court condoned the delay and directed the office to register the appeal. The petitioner is aggrieved

by the said order.

7. On 15/11/2019, this Court while issuing notice to the respondent, granted ad interim stay of proceedings before the Appellate Court. The said

interim order has continued till date.

8. Mr.Mishra, learned counsel appearing for the petitioner, invited attention of this Court to the impugned order and he submitted that there was hardly

any reasoning in the impugned order while condoning huge delay of 2362 days. By inviting attention of this Court to paragraph-5 of the impugned

order, it is submitted on behalf of the petitioner that the impugned order deserved to be set aside and the application for condonation of delay filed by

the respondent before the Appellate Court ought to be dismissed.

9. On the other hand, Ms Paunikar, learned counsel appearing for the respondent, submitted that in the original proceedings before the Trial Court

itself notice was not served on the respondent and that the procedure of issuing notice through paper publication itself was flawed. On this basis, it

was submitted that since the respondent was not aware about the proceedings before the Trial Court and the eventual ex parte decree passed in

favour of the petitioner, the Appellate Court was justified in condoning the delay.

10. Having heard the learned counsel for the rival parties and upon perusal of the impugned order, it appears that the impugned order is not

sustainable. It is an admitted position that in the present case the appeal filed by the respondent before the Appellate Court suffered from a huge delay

of 2362 days. In such a situation, the respondent was expected to give detailed grounds for condonation of such huge delay with supporting material.

The Appellate Court was also expected to appreciate such material and to give opportunity to the parties to lead evidence, if necessary in support of

their rival positions. Instead of doing so, the Appellate Court in a cavalier manner has allowed the application for condonation of delay of as many as

2362 days. The only reasoning for allowing the said application is contained in paragraph-5 of the impugned order, which reads as follows:

5) The office report shows 2362 days delay in filing the appeal. It appears from the record that, the subject matter of the suit is immovable property. It

appears that, impugned judgment was passed ex-parte against the applicant. It also appears that, notice was issued to the applicant through paper

publication on dated 6-8-2010. Hence, it is possible that the applicant could not read that paper publication and could not receive the notice through

paper publication.

11. This Court is not at all satisfied with the aforesaid reasoning and the approach adopted by the Appellate Court while passing the impugned order.

The Appellate Court ought to have considered the rival contentions on the question of condonation of delay in detail and thereupon rendered findings

either way.

12. In view of the above, the impugned order deserves to be set aside and the Appellate Court needs to decide the question of condonation of delay

afresh by giving opportunities to the parties to place on record additional material and to lead evidence, if necessary. This is particularly because the

question of limitation and condonation of delay is a mixed question of facts and law.

13. In view of the above, the writ petition is partly allowed. The impugned order passed by the Appellate Court is quashed and set aside. The

Appellate Court is directed to take up the application for condonation of delay filed on behalf of the respondent for consideration afresh. The Appellate

Court shall give opportunity to the parties to place on record additional material and opportunity to lead evidence, if necessary, in support of their rival

positions on the question of condonation of delay. The Appellate Court shall decide the application for condonation of delay i.e. Miscellaneous Civil

Application No.208 of 2019, within a period of six weeks from the parties appearing before the Appellate Court.

14. The parties are directed to appear before the Appellate Court on 21/06/2021.

15. The writ petition stands disposed of in the above terms. No order as to costs.