HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 83 OF 2019
WITH CA/2072/2019 IN SA/83/2019
WITH CA/5259/2019 IN SA/83/2019
WITH CA/4745/2020 IN SA/83/2019

Agricultural Produce Market Committee,
Jadhavwadi, New Mondha,
Aurangabad Through its Secretary .. Appellant
(Defendant No. 3)

VERSUS

1] Tanaji S/o Premraj Gunjal (died)
Through its LRs.

1A] Meerabai w/o Tanaji Gunjal,
Age : 43 years, Occu. Agri.,
R/o. Sy. No. 8, Jadhavwadi,
Tq. & Dist. Aurangabad

1B. Laxman S/o Tanaji Gunjal,
Age 25 years, Occu. Service,
R/o. As above

1C. Sanjay S/o Tanaji Gunjal,
Age : 24 years, Occu. : Service,
R/o as above

1D. Anita W/o Haridas Mahaske,
Age : 23 years, Occu. Household,
R/o Harsul, Tq. & Dist. Aurangabad

2] Parsram S/o Premraj Gunjal (died)
Through its LRs.

2A. Chandrakala W/o Parsram Gunjal,
Age : 45 years, Occu. Agri.,
R/o. Sy. No. 8, Jadhavwadi,
Tq. & Dist. Beed.

2B. Vandana W/o Krishna Wani,
Age : 23 years, Occu. Household,
R/o Padegaon, Tq. & Dist. Aurangabad

2C. Sunita W/o Santosh Bhrahmakar,
Age : 23 years, Occu. Household,
R/o Harsool, Tq. & Dist. Aurangabad

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2D. Vitthal S/o Parsram Gunjal,
Age : 19 years, Occu. Agri.,
R/o Sy. No. 8, Jadhavwadi,
Tq. & Dist. Aurangabad

2E. Rohidas S/o Parsram Gunjal,
Age : 20 years, Occu. Education,
R/o. As above

3] Deputy Collector,
Additional Collector Office,
Collectorate Campus, Aurangabad

4] Special Land Acquisition Officer,
Jaykwadi Project, Collector Office,
Aurangabad

5] Kailas S/o Premraj Gunjal,
Age 38 years, Occu. Agri.,
Survey No. 8, Jadhavwadi,
Tq. & Dist. Aurangabad .. Respondents

...

Advocate for appellant : Mr. S.S. Thombre
Advocate for the respondents no. 1A to 1D, 2A to 2E and 5 : Mr. N.K. Kakde
h/f. Mr. Dhananjay A. Naik
AGP for respondents no. 3 and 4 – State : Mr. N.T. Bhagat

...

CORAM : MANGESH S. PATIL, J.

DATE : 21 APRIL 2022

ORAL JUDGMENT :

Original defendant no. 3 in RCS/62/2001 preferred an appeal under section 96 of the Code of Civil Procedure before the lower appellate court. Since there was delay of 406 days in preferring the appeal, an application under section 5 of the Limitation Act, 1963 was filed. By judgment and order under challenge in this second appeal, the lower appellate court has rejected that application.

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2. I have heard the learned advocates of both the sides on following substantial question of law :-

> Whether the lower appellate court has committed gross illegality in not appreciating all the facts and circumstances giving rise to the dispute as well as the delay while refusing to condone the delay ?

3. The learned advocate Mr. Thombre for the appellant would submit that the appellant is Agricultural Produce Market Committee ("**APMC**" for short). The land to the extent of 3 Hectare and 15 Are out of the land survey no. 8 was acquired for its use by the State Government. Contesting respondents no. 1 to 2 (E) who are the legal representatives of the original plaintiffs claiming that the land that was actually acquired for the APMC was less than 3 Hectare 15 Are prayed for declaration and injunction to the extent of portion admeasuring 2 Acre 8 Guntha from the same survey number.

4. He would submit that it was specifically pointed out to the lower appellate court that the suit was decided in the absence of any contest by the appellant. It acquired the knowledge of decision by the trial court belatedly. Substantial right to immovable property of the APMC which is a statutory body was at the peril. The delay was not intentional or deliberate and still the lower appellate court took a strict view in refusing to condone the delay. It lost sight of the fact that the appellant was not to gain anything by allowing its right to the property to be lost in default. Though the law of limitation is harsh, it should have

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been applied by taking into account all the attending circumstances including the falsity in the claim of the respondents – plaintiffs. In spite of having obtained compensation to the extent of 3 Hectare 15 Are, they were bold enough to lay a claim. The revenue entries had consistently demonstrated as to how no land remained with the original owners in view of the acquisition and subsequent disposition of the remaining portion. The decision was confirmed right up to the Divisional Commissioner level. Having failed to obtain favourable orders in that proceeding, the respondents have been trying to grab the land. There are serious allegations being levelled by the appellant that the respondents – plaintiffs even must have indulged in some manipulation of the revenue record and an FIR was also lodged in that respect. All these facts and circumstances needed to be taken into account while considering the request for condonation of delay. Bearing in mind that the appellant is a statutory body and must have been required to undertake some procedure leading up to a decision to prefer an appeal, the delay was not enormous or inordinate. It should have been condoned by imposing sufficient costs and that would have allowed the appellant to demonstrate the illegality in the judgment and decree passed by the trial court.

5. In support of his submissions, learned advocate Mr. Thombre places reliance on following decisions :-

i) State of Bihar Vs. Dhirendra Kumar and others; 1995 SC 1955

ii) Municipal Corporation, Gwalior Vs. Ramcharan (D) by LRs. and others; AIR 2003 SC 2164

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iii) State of Karnataka Vs. Y. Moideen Kunhi (dead) by LRs. and others; AIR 2009 SC 2577

iv) State of Punjab Vs. Amarjit Singh (2011) 14 SCC 713

6. Per contra, learned advocate Mr. Kakde for the contesting respondents - plaintiffs submits that the appellant should blame itself for not defending the suit promptly. In the judgment under challenge, the lower appellate court has demonstrated as to how at every stage, the appellant was remiss. In spite of sufficient chances having been afforded, even by imposing cost, the cost was not deposited and the appellant did not come forward to participate at the trial, it was inevitable for the trial court to proceed in the absence of the appellant.

7. Learned advocate Mr. Kakde would further submit that even the ground being put forth for condoning the delay was not factually sustainable. Though attempt was made to demonstrate that the appellant got the knowledge of the decision by the trial court belatedly certified copies were stated to have been obtained, thereafter, in-fact application for obtaining certified copy of the judgment of the trial court was preferred on behalf of the appellant on 20-11-2016. The trial court had decided the suit on 18-01-2016. He would submit that even certified copy was obtained on 17-08-2016 and in-fact, since thereafter the appellant had sufficient time to prefer the appeal. No explanation was coming forth in the application rather a mis-statement of fact was made. The lower appellate court has rightly

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pointed out as to how there was no sufficient cause for condoning the delay and has rightly rejected the application.

8. I have carefully gone through the rival submissions and the papers.

9. There cannot be a dispute about the fact that for whatever reason, may be sheer negligence of the appellant and particularly its officers, the suit was not contested on its behalf. It is also a matter of record that even it failed to take further part in the trial. Some sort of application for permission to lead evidence was also moved on its behalf. It was allowed subject to payment of cost but even those were not deposited. To this extent, the observations of the learned district court in the impugned order are certainly unassailable.

10. Again, it does appear that though the appellant was trying to put up a case about having acquired knowledge of the decision of the trial court in November 2016, certified copy of the application for obtaining certified copy of the judgment of the trial court filed on behalf of the appellant has been placed on record which clearly demonstrates that the application for obtaining the certified copy was filed on behalf of the appellant on 20-01-2016 and even the copy was obtained on 17-08-2016. This clearly belies appellant's case about having acquired knowledge about judgment of the trial court in November 2016.

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11. It is trite that the law of limitation is harsh. However, it is equally trite that the courts have to adopt a pragmatic approach while considering the request for condoning the delay rather than a pedantic one. In the process, at times, it is inevitable that even merits of the original proceedings are considered or taken into account. Bearing in mind the approach to be adopted by the court while considering the request for condoning the delay, in my considered view, the reference to the disputed facts becomes inevitable.

12. There cannot be a dispute about the fact that the appellant is a statutory body. There is also no dispute about the fact that the land survey no. 9 belonged to the predecessor of the respondents-plaintiffs. Again there cannot be any dispute about the fact that some portion of that survey number was acquired for the use of the appellant *albeit* the parties are at two poles as to the extent of such acquired land. Prima facie, the decisions by revenue authorities in the proceedings under the Land Revenue Code, though may not be decisive of the issue demonstrate that the land admeasuring 3 Hectare and 15 Are was acquired for the use of the appellant under an award and even the compensation was awarded. It is quite true that even the respondents-plaintiffs have been relying upon couple of communications from the office of the concerned Sub Divisional Office informing them that only land admeasuring 1 Hectare and 61 Are was acquired for the APMC.

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13. In the teeth of such serious dispute as to the exact extent of the land acquired for the appellants, the decision rendered by the trial court which was admittedly a decision by default, would require examination at the hands of the lower appellate court. It is a matter of compulsory acquisition of land. Individual interests of the respondents-plaintiffs are pitted against public exchequer. It would, therefore, be imperative that the dispute reaches finality on merits rather than by default.

14. True it is that the appellant has been remiss in defending the suit, as has been demonstrated by the lower appellate court. However, it would tantamount to punishing a statutory body for the inaction of its officers in allowing the suit to be decided *ex parte*. That cannot be allowed to happen. The delay of 406 days was not as enormous as to defeat the right to defend the suit by a statutory body. The lower appellate court has not approached the dispute from all these aspects and has refused to condone the delay which in my considered view is failure to exercise the discretion in a proper manner.

15. Having considered all the afore-mentioned aspects, in my view, the appeal deserves to be allowed on the afore-mentioned substantial questions of law, subject, however, to heavy costs which would sufficiently compensate the respondents – plaintiffs.

16. The second appeal is allowed. The impugned judgment and order is quashed and set aside and the delay is condoned subject

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to the appellant depositing costs of Rs.10,000/- (Rupees Ten Thousand) in the lower appellate court within six weeks from today.

17. On such costs being deposited, the respondents – plaintiffs would be entitled to claim it.

18. Since order of status-quo is in operation till date, the same arrangement would continue for a period of six weeks from today.

19. All pending civil applications stand disposed of.

[MANGESH S. PATIL]
JUDGE

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