

MHBU040012632022



Presented on : 12/10/2022
Registered on : 12/10/2022
Decided on : 06/10/2023
Duration : 0 Y. 11 M. 25 D.

IN THE COURT OF AD-HOC DISTRICT JUDGE-1, KHAMGAON.
(Presided over by Laxmikant A. Bidwai)

Civil M. No. 70/2022

Exhibit No.

Dayaram Jamaji Suradkar

Age: 67 yrs. Occupation : Agriculturist
r/o. Etkhed, Tq. Sangrampur
District Buldana

.....Appellant

- Versus -

1. Arjun Jamaji Suralkar

Age: 72 yrs. Occupation : Agriculturist

2. Shyamrao Jamaji Suralkar

Age: 70 yrs. Occupation : Agriculturist

3. Haribhau Jamaji Suralkar

Age: 65 yrs. Occupation : Agriculturist

No. 1 & 3 r/o. Etkhed, Tq. Sangrampur
District Buldana

No.2 r/o. Siddhivinayak Society,

MMRDA Colony, RTO Ivin,

Subhash Nagar, Veer Hanuman Mandir

Bhandup (W), Mumbai – 400078. **.....Respondents**

Application under Section 5 of Indian Limitation Act 1963.

Appearance :

Mr. A. S. Kshirsagar, Advocate for the Appellant.

Mr. S. G. Bihade, Advocate for respondents.

JUDGMENT

(Delivered on this 06th October 2023)

01. This is an application under Section 5 of the Indian Limitation Act for condonation of delay of 10 years 8 months and 7 days.

02. Briefly it is contended that Regular Civil Suit No.13/2010 was filed in the Court of Civil Judge Junior Division, Sangrampur for the partition. In that suit the present applicant was the defendant No.2. During the course of trial the plaintiff therein mislead to present applicant and informed that no partition in the land admeasuring 81 R out of Gut No.38 situated at Etkhed Tq. Sangrampur is claimed before the Court, whereas partition is claimed only in the land admeasuring 2 H 31 R out of Gut No.29 of village Etkhed Tq. Sangrampur, therefore present applicant need not to participate in the suit. Believing the words of plaintiff therein, the present applicant did not participated in that suit. In this backdrop the said suit was decreed on 19/12/2011. As such the decree was passed against the present applicant. Subsequently in the month of August 2022 the

applicant received the notice from the Tahasil Court, Sangrampur for effecting the partition of the land Gut No.38 admeasuring 81R. By that time only the applicant came to know about the decree passed against him in respect of land Gut No.38 admeasuring 81R. As the applicant believes the words of plaintiff of RCS No.13/2010 and did not participated in the proceeding, therefore the delay is caused to prefer the appeal, hence, it may be condoned.

03. The respondent No.1 has filed the reply as per Exh.12 and strongly opposed the application on the ground that the Judgment and decree in RCS No.13/2010 was challenged by the defendant No.1 therein before the first appellate Court, bearing Civil Appeal No.10/2012. The said appeal was dismissed on 06/08/2018. Subsequently the Judgment and decree by the first appellant Court was challenged before the Hon'ble High Court by virtue of second appeal No.27/2019. The second appeal also came to be dismissed on 07/09/2019. In first appeal and second appeal the present applicant was party, therefore, it cannot be said that the present applicant was unaware about the decree passed against him by the trial Court and confirmed by first appellate Court and equally by second appellate Court. Hence, application is deserves to be rejected.

04. The respondent Nos. 2 and 3 remained absent and not filed the reply.

05. On repeated calls applicant and his Advocate remained absent till 4.00 p.m. Moreover no adjournment application is submitted by the applicant. On the other hand the Advocate Bihade for the respondent No.1 is present and he argued for him.

06. The only ground with the applicant is that he believed the words of respondent No.1, who was plaintiff in RCS No.13/2010 and not participated in the trial, therefore he was unaware about the decree passed against him. But on the strength of reply and documents placed on record by respondent No.1, it became very clear that the applicant was party in first appeal bearing Civil Appeal No.10/2012 and second appeal bearing No.27/2019. If it is so then there is every reason to say that the applicant was served with notices of first appeal and second appeal too. So it cannot be said that he was unaware about the decree passed against him by the trial Court, until he received the notice from Tahasil office for effecting the partition. It is also required to be taken into consideration that on service of summons by trial Court to the applicant he must have received the copy of plaint, wherein it is categorically mentioned that the partition in the Gut No.38 admeasuring 81R was claimed by the plaintiff therein. So the version of the applicant that he believed the words of plaintiff and understood that the partition in Gut No.38 admeasuring 81R was not claimed in RCS No.13/2010 is not trustworthy.

07. The second and most important aspect is that already the Judgment and decree in RCS No.13/2010 was challenged before the first appellate Court and the second appellate Court by one of the defendant in RCS No.13/2010 and both the appeals were dismissed. In both the appeals the present applicant was the party. In this scenario there is no scope for second round of litigation by filing the first appeal against the Judgment and decree in RCS No.13/2010, therefore there is no question at all to condone the delay for permission to present the first appeal.

08. After above discussion I came to the conclusion that the present application is devoid of merits hence, I proceed to pass following order.

ORDER

1. The application stands rejected.
2. No order as to costs.

Date :06/10/2023
Place: Khamgaon

(Laxmikant A. Bidwai)
Ad-hoc District Judge-1,
Khamgaon

Certificate

I affirm that the contents of this P. D.F. file judgment are same word for word as per original Judgment.

Name of Steno	C. N. Mahale (Grade-II)
Name of Court	Adhoc District Judge-1, Khamgaon.
Direct dictated on	06-10-2023,
Checked on	07-10-2023,
Signed on	07-10-2023,
Uploaded on	07-10-2023,