Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 79 OF 2023

SHAMSUNDAR NAMDEV VAIGANKAR
ALIAS XAMSUNDOR NAMDEV
NAIQUE VAINGONCAR AND 3 ORS. ..... Appellants

Versus

DEVIDAS DATTARAM USKAIKAR .....Respondents

Mr Gaurish Agni and Mr Kishan Kavlekar, Advocates for the Appellants.

CORAM: M. S. SONAK, J.

DATED: 18th JANUARY 2024

P.C. :

1. Heard Mr G. Agni with Mr K. Kavlekar, learned counsel for the Appellants.

2. This Second Appeal is directed against the order dated 22.03.2022 by which the First Appellate Court has declined to condone the delay of 5842 days in filing an appeal against the judgment and order dated 07.02.2005 passed by the Civil Judge Junior Division, Panaji, in Inventory Proceedings No.72/2004/C.

3. The First Appellate Court has recorded a finding that the Appellants got knowledge of the judgment and order dated 07.02.2005 in June 2015. The Appellants do not even dispute this position. The Appellants' only defence was that they were pursuing the mutation proceedings in which they had raised a plea that this judgment and order dated 07.02.2005 was

a nullity after the mutation proceedings were decided against them; they were advised to institute this appeal. Accordingly, it was the claim that the Appellants are entitled to the exclusion of the period which they spent bonafide in the mutation proceedings.

4. Mr Agni, learned counsel for the Appellants, submitted that the Appellants were not made parties to the Inventory Proceedings, which culminated in the order dated 07.02.2005; however, after the Appellants got knowledge in 2015, they were pursuing the mutation proceedings in which a plea of nullity was raised. He submitted that the delay from the date of knowledge would be 1800 days or about six years. He submits that sufficient cause was shown and in any case, the period during which the Appellants were pursuing the mutation proceedings bonafide should have been excluded under Section 14 of the Limitation Act. He submitted that in such matters, a liberal approach is warranted considering the decisions of the Hon'ble Supreme Court in ***Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy and others***[1] and ***Collector, Land Acquisition, Anantnag and another Vs Mast. Katiji & Ors.***[2]

5. On consideration of the above submissions and the material on record, no error can be found in the order dated 22.03.2022 by which the inordinate delay of 5842 days was not condoned. Even if the delay is

[1] (2013) 12 SCC 649
[2] (AIR 1989 SC 1353

regarded as 1800 days from the date of knowledge of the judgment and order dated 07.02.2005 still, there is a delay of almost 1800 days or six years which qualifies as inordinate.

6. In terms of the decision cited by Mr Agni, the length of the delay is of no consequence, and what is important is the quality of the cause shown. In this case, even the quality of the cause shown can hardly be regarded as sufficient. After obtaining the knowledge of the judgment and order dated 07.02.2005 in June 2015, the Appellants should have rushed to the Appellate Court seeking leave to appeal. Instead, they continued with the mutation proceedings with full knowledge that the Revenue Authorities have neither power to decide the issue of title nor can they declare the order made by the Inventory Court as null and void.

7. *Esha Bhattacharjee* (supra) and *Mast. Katiji* (supra) indeed held that the Court should be liberal in condoning the delay. However, *Esha Bhattacharjee* (supra) holds that the concept of liberal approach has to encapsulate the conception of reasonableness, and it cannot be allowed a totally unfettered free play. There is a distinction between inordinate delay and delay of short duration or few days, for to the former doctrine of prejudice is attracted. In contrast, to the latter it may not be attracted. That apart, the first one warrants a strict approach, whereas the second calls for a liberal delineation. Thus, even applying the principles in *Esha Bhattacharjee* (supra), this inordinate delay of 5842 days or even six years

cannot be condoned merely based on the premise that a liberal approach is warranted.

8. This was also not a case of exclusion of period under Section 14 of the Limitation Act. This Section contemplates the proceedings pending before a Court or some other authority in good faith, and ultimately, it is found that such a Court had no jurisdiction over the subject matter. Here, the mutation proceedings before the revenue authority cannot, in the facts of the present case, be regarded as proceedings to which the provisions of Section 14 would apply. In any case, soon after the Appellants got knowledge of the judgment and order dated 07.02.2005, at least within some reasonable period after that, the appeal could have and should have been instituted.

9. There is no error of law or fact in the view taken by the First Appellate Court in its judgment and order dated 22.03.2022. Mr Agni, to the query from the Court, responded that the property, which was the subject matter of the Inventory Proceedings and to which the Appellants lay a claim, measures only about 52 square metres. This is possibly the reason why the Appellants continued with their mutation proceedings and did not think it necessary to file any substantive appeal.

10. For all the above reasons, this appeal is dismissed as it raises no substantial question of law. There shall be no order for costs.

M. S. SONAK, J.