



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 360 OF 2019

Rangamma Soundappa Chetty
Occupation: Housewife,
Hindu, Indian Inhabitant of Bombay,
Residing at premises No.3,
Parawatibai Chawl, Hingwala Plot,
Nityanand Nagar, Ghatkopar (W),
Mumbai-400 086

....Appellant
(Original Defendant)

Versus

Palaniswamy Obuli Chetty
Occupation: Service,
Hindu, Indian Inhabitant of Bombay,
Residing at premises No.1, Parawatibai
Chawl, Hingwala Plot, Nityanand Nagar,
Ghatkopar (W), Mumbai-400 086

...Respondent
(Original Plaintiff)

Mr. Ramprakash Pandey a/w. Mr. Udaybhan Tiwari, for the Appellant.
Mr. Arvind Taral, for the Respondent.

CORAM : JITENDRA JAIN, J.

DATED : 19th DECEMBER 2025

ORAL JUDGMENT :

1. This appeal is filed against the order of the Trial Court whereby the Court has refused to take written statement of the original defendant on the ground of delay.

2. On the earlier occasion, the Court directed the siblings to appear before this Court so that they can give undertaking not to use abusive language against each other, which is the subject matter of the defamation suit but the siblings can litigate with respect to other suits relating to their

claim on the properties. However, the plaintiff-brother refused this proposal and insisted that he would pursue the defamation suit. Therefore, this Court has no option but to proceed with the adjudication of the present appeal.

3. The facts of the present proceedings reminds this Court about two festivals of our country viz., “Raksha Bandhan” and “Bhaubeej”. The significance of these two festivals in our country is a reflection of the eternal bond between brothers and sisters, a heartfelt celebration of love, support, trust and protection between siblings. The reason why these festivals are celebrated in our country is to ensure both siblings would stand with each other in good and bad times whenever anyone requires the other. It is a bonding of moral support which makes this relationship very special. However, nowadays, sadly, siblings don’t stand together but against each other in court of law.

4. During life's highs and lows, joys and sorrows or when a storm blows, a sister does not fear for she knows that standing by her is her brother, who will protect her from every wrong. He is her shield, her strength, her weakness.... Likewise, a brother knows his sister like his own mind, knowing that there will never be anyone as trusting and kind. Having a sister is like holding a mirror to one's soul, seeing you for who you are, understanding your silence. The beauty of this loving bond is that even when they are miles apart, they are always close at heart.

5. Now adverting to the facts of the present case. This is again an instance of a very sorry state of affairs, where two siblings brother and sister, very religious by nature are litigating for properties of their parents. The animosity between the siblings have reached a stage that the words used in the complaint made by one party against another are highly

objectionable and fails to reflect the religious orientation of the parties. I am not reproducing these words in the present order for obvious reasons. It is with great sadness that this Court has to observe that people who are senior citizens or who are about to reach that age and who have experience of life so closely and religiously have used these words.

6. The suit is filed by the plaintiff -brother against the defendant-sister for defamation. According to the Trial Court, the original defendant was aware about the proceedings having been filed in the Court since an advocate by the name of Ms. Sapna Rachure appeared in these proceedings. The Court further observed that there is an affidavit of service and a bailiff's report showing service of the proceedings on the original defendant. It was on these grounds that the Trial Court came to a conclusion that the original defendant though conscious and aware of the proceedings did not file the written statement within the time prescribed and, therefore, the delay cannot be condoned.

7. It is on the above backdrop that the original defendant has filed the present appeal challenging the findings of the Trial Court.

8. I have heard learned counsel for the appellant and respondent. On the request made by the Court, Ms. Sapna Rachure also attended the Court proceedings since her name was mentioned in the impugned order as one of the reasons why the prayer for condoning delay in filing the written statement was rejected.

9. The main reason in the impugned order is that Ms. Sapna Rachure appeared in this matter when it was pending before the High Court and, therefore, the defendant was aware of the proceedings and, therefore, delay could not be condoned on the ground that the defendant was never served

with the proceedings. The confusion revolving around Ms. Sapna Rachure arose because her name was shown as advocate for the respondent in Suit No.2246 of 2009 which was filed in this Court. The said Suit was numbered on transfer to the City Civil Court as 104176/2009 and her name again appeared as advocate for the respondent in the City Civil Court's website. The said suit was listed on 6 December 2012 and 17 April 2013 in Court Room No.2 and Court Room No.33 respectively.

10. The present suit with which we are concerned and which was filed in this Court was numbered as S/2253/2009 and in the said Suit, as per the High Court website, name of Ms. Sapna Rachure was not there. This present suit on transfer to the City Civil Court was numbered as 104178 of 2009 and the present suit was listed on 6 December 2012 and 17 April 2013 before the same Court i.e. Court room No.2 and Court room No.33 respectively.

11. In this connection, it is also important to note that there was another suit which was filed in this High Court, numbered as 2250 of 2009 which on transfer to the City Civil Court was numbered as 104177 of 2009 and in the tag-down tab, though Ms. Sapna Rachure was not engaged in this matter, her name was wrongly selected by the office of the City Civil Court, probably because in Suit No.104176 of 2009 Ms. Sapna Rachure had filed her *vakalatnama*. The mistake which was committed in recording the name of Ms. Sapna Rachure in Suit 104177 of 2009 was continued in the details of the present suit which is 104178 of 2009, though Ms. Sapna Rachure was not connected with the matter.

12. To summarise, Ms. Sapna Rachure's had filed a *vakalatnama* in the preceding matter and by the tag-down tab her name was reflected by the office of the City Civil Court in present matter also, though she had not

filed a vakalatnama which resulted into the present confusion.

13. It was on account of the above confusion and the error committed by the office of the City Civil Court that Ms. Sapna Rachure's name was wrongly mentioned in the present matter, though she had not filed her *Vakalatnama* and was in no way connected with the present matter. Ms. Sapna Rachure is present in the Court and has filed a detailed compilation on the basis of which I have narrated the above error which has crept in. Accepting the statement made by Ms. Sapna Rachure and on perusal of the records which are referred to above and filed by Ms. Sapna Rachure, it is clear that Ms. Sapna Rachure was never engaged by the defendant in the present matter. Therefore, the main basis of rejection of the prayer to take the written statement on record by not condoning the delay is based on an erroneous basis which I have narrated above. Therefore, this reasoning of the City Civil Court for rejecting the application to take the written statement on record after the prescribed period cannot be sustained.

14. It is also important to note that in the Roznama of 22 February 2019, the counsel for the defendant requested that the name of Ms. Sapna Rachure should be deleted and the said request was accepted.

15. This Court appreciates the assistance rendered by Ms. Sapna Rachure in clearing the confusion.

16. The other reason for the City Civil Court for coming to the conclusion that the proceedings were served on the defendant was that the bailiff had served the copies of the proceedings on the defendant. In this connection, it is relevant to note page 68 of the present appeal, which is the recording of the office of the Sheriff to show that the proceedings were served on the defendant. At the top of page 68 there is a signature of Rangamma S.

Chetty and it is dated 28 October 2009. *Prima facie*, it appears that this signature does not tally with the signature of the defendant which is at page No.59 of the present appeal. Therefore, *prima facie* it cannot be accepted that the signature at page 68 by which the proceedings are claimed to be served has been actually served upon the defendant.

17. The learned counsel for the appellant states that he has taken out a perjury application before the City Civil Court and the City Civil Court has taken a serious note of the same and the proceedings are pending. In my view, any observations on this issue today will not be proper since the issue is pending before the City Civil Court in a perjury application. The City Civil Court is to take the perjury proceedings to its logical conclusion and if it is found that there was in reality a falsification or fraud played then appropriate proceedings including criminal proceedings be initiated against the persons responsible.

18. Since the whole basis of the order is the above two reasons and these two reasons have been held by me to be incorrect, the impugned order is set aside and the defendant is permitted to file the written statement within eight weeks from today and the learned Trial Court is to take the same on record. The reason why I have taken this view in addition to what is stated above is because this is a case of defamation and therefore, the parties should get adequate opportunity to defend before any final order is passed. The suit for defamation has serious consequences on the reputation of both the parties and therefore, the defendant is given an opportunity to file the written statement.

19. Learned counsel for the plaintiff states that heavy cost should be imposed if this Court permits the written statement to be taken on record. In my view and for the reasons stated above, I have come to the conclusion

that the proceedings were not served on the defendant and the conclusion drawn by the Trial Court was on the basis of the confusion which arose because of the error on the part of the office of the City Civil Court. It is settled position that for the errors of the office of the Court, the parties should not suffer. Therefore, this Court cannot attribute any negligence on part of the defendant and the confusion which arose in this matter and, therefore the submission made for imposing heavy cost on the defendant cannot be accepted.

20. The various proceedings between themselves and more particularly the present proceedings are nothing but an attempt to clog the system and a counterblast against each other. This is one of the reasons why the Courts are unable to take up the matters which really deserves more attention.

21. The relationship of a brother and sister is so noble and precious where one sibling will go any lengths to protect the other but in today's day and age, this special bond is fraught with disputes, emotional tension or unresolved conflict. The root cause of this broken sibling relationship can be attributed to greed, ego and desire of a materialistic life than to crave for life with peace and harmony. Siblings should learn to give up than to give into litigation.

22. To conclude, considering the age of the parties, it would be in their best interest that they resolve their disputes amicably thereby restoring peace and harmony in their relationship. After all the bond between a brother and sister is sometimes tightly woven, sometimes loosely held but never broken.

23. The City Civil Court should take up the main suit in its regular turn and no priority should be given to this matter.

24. The Appeal is allowed.

[JITENDRA JAIN, J.]