

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

11. CA/1976/2015 In CRA/175/2009

SURESH RAMRAO SANAP
V/S
THE STATE OF MAHARASHTRA AND ORS

Mr. N.R. Thorat h/f. Mr. N.S. Sanap, Advocate for applicant.
Mr. V.H. Dighe, AGP for respondents.

CORAM : T.V. NALAWADE, J.
DATED : 15th December, 2015.

ORDER :

1. The application is filed for setting aside the order of dismissal of revision made by this Court and restoration of revision. As nobody had turned up to prosecute the revision, by the order dated 16.9.2010, this Court dismissed the revision. The present proceeding came to be filed on 21.1.2015 and so, the delay of more than four years is caused in filing the application for restoration and setting aside the order of dismissal. Both the sides are heard.

2. In the application, blame is put on the counsel. No other contention is made.

3. For getting the relief of condonation of delay, the applicant is required to show that there was sufficient cause for

not remaining present before the Court for prosecuting the matter and he is also required to show that there is some arguable case in the main matter.

4. A suit was filed for relief of injunction by the present applicant in the year 1993 against the State Government, Executive Engineer and Sub-Divisional Engineer of Public Works Department (PWD). The plaintiff, present applicant was running a hotel on the space of 10 fts. x 10 fts. by the side of national highway and he wanted to protect his possession. Decree of injunction was given and the Court had observed that the plaintiff can be evicted by adopting due process of law. This decision was given on 30.6.1997.

5. It appears that under the provisions of National Highway Act, 2002, some action was taken for removal of encroachment made on the space which was left for national highway. Notices were published to inform to the encroachers that the encroachments will be removed and they were asked to remove the encroachments. Then the action was taken and the encroachments were removed in the year 2002. Present applicant filed execution proceeding bearing R.D. No. 81/2006 and he requested the Court for taking action of contempt of

Court against the present respondents. The action was taken by National Highway Authority and the procedure as laid down in aforesaid Act was followed. In view of these circumstances, the Executing Court dismissed the application filed for taking action for contempt of Court and the executing proceeding itself. It appears that after dismissal of the execution proceeding, the applicant filed suit for damages in the year 2009, but that suit also came to be dismissed. Simultaneously, he filed revision against the order of dismissal of the executing proceeding.

6. There is no material whatsoever with the applicant to show that the said piece of land was in his possession by way of lease. It is a part and parcel of the space which was under the use of Highway Authority and the action was taken as provided under the said Act. Thus, nothing can be achieved by condoning the delay and allowing the present applicant to argue on merits in the revision. This Court holds that sufficient cause is not shown and further, there is no arguable case in the main matter.

7. In the result, the application stands dismissed.

[T.V. NALAWADE, J.]

ssc/