

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 12061 OF 2015
IN
CIVIL REVISION APPLICATION ST. NO. 21998 OF 2015**

Kisanlal Motilal Jhawar Died through
L.Rs. Sanjay Kisanlal Jhawar .. Applicant

Versus

Kanakmal Maganmal Gandhi and
others .. Respondents

Shri Niteen V. Gaware, Advocate for the Applicant.
Shri R. R. Mantri, Advocate h/f Shri R. R. Sancheti, Advocate for
the Respondent No. 1.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 23RD SEPTEMBER, 2015.**

PER COURT :

. This is an application for condonation of delay of 60 days
caused in filing civil revision application.

2. Mr. Gaware the learned counsel for the applicant submits
that, the judgment and decree was passed in appeal on
27.02.2015. The applicant got the knowledge of the said
judgment and decree passed by the Appellate Court on
22.04.2015 and thereafter the applicant, took necessary steps for
collecting documents and the advocate of the Trial Court was

contacted. Opinion of advocate was sought to file revision before this Court. The matter was handed over on 03.07.2015 for filing revision to him and then revision is filed immediately on 24.07.2015. According to the learned counsel, the delay caused in filing revision is not intentional one, but due to aforesaid reasons. The learned counsel submits that, the present petitioner has independently filed appeal before the District Court against the judgment and decree passed by the Trial Court of eviction and the present revision is filed pursuant to judgment and decree passed in appeal filed by the present petitioner. According to the learned counsel, the petitioner be given an opportunity to defend the revision. The revision filed by other brothers of the petitioner would not come in the way of the present petitioner, as the present revision is based on different grounds.

3. Mr. Mantri, the learned counsel for the contesting respondent No.1 submits that, the conduct of the petitioner is not bonafide. Since beginning the petitioner is trying to protract the proceeding. One writ petition bearing Writ Petition No. 2911 of 2005 was filed by the present respondent No. 1. In the said writ petition this Court had observed the conduct of the present petitioner and had even imposed cost of Rs. 10,000/- upon the present petitioner while disposing of the said writ petition. The learned counsel submits that, the present petitioner had

appeared in Civil Revision Application No. 62 of 2015 which is decided by this Court on 23rd July, 2015. After the said revision is dismissed, present revision is filed along with application for condonation of delay. In the said C. R. A. No. 62 of 2015 present petitioner had appeared. The order passed by this Court in C.R.A. No. 62 of 2015 dated 23.07.2015 is confirmed by the Apex Court and thereafter this matter is circulated. According to the learned counsel, there are absolutely no grounds mentioned for condonation of delay. The discretion cannot be exercised in favour of such litigant.

4. I have considered the submissions. The order passed by this Court in the earlier revision bearing C. R. A. No. 62 of 2015 can be considered, if, present revision is required to be decided on merits.

5. Present application is filed to the extent of condonation of delay. It is stated that the petitioner got the knowledge for the first time on 22.04.2015. The delay is of 60 days. The petitioner contends that he has got the knowledge on 22.04.2015, then time was lost for taking necessary information and collecting documents which were old one. The averments made in the application for condonation of delay by the present petitioner are not controverted by filing affidavit by the respondent No. 1. In the arguments the same are being sought to be controverted.

6. It is trite that, when cause for substantial justice and technical considerations are pitted against each other, the cause for substantial justice has to be sub served. The effect of the judgment delivered in other revision can be considered when the present revision is being heard on merits.

7. Considering the above conspectus of the matter and that the delay is of 60 days, I am inclined to exercise discretion in favour of the petitioner. However, the petitioner also deserves to be mulct with cost. The present application is allowed in terms of prayer clause "A" on condition that the applicant pays cost of Rs. 15,000/- (Rs. Fifteen thousands only) to the respondent No. 1 or deposits in this Court by 29th September, 2015. The payment of cost is condition precedent.

8. In case cost is paid or deposited by 29th September, 2015, then place the matter on 30th September, 2015. In case the cost is not paid/deposited by 29th September, 2015, then the present civil application stands rejected. The civil application is disposed of.

[S. V. GANGAPURWALA, J.]