

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

CIVIL REVISION APPLICATION NO.229 OF 2014

Narendra Bhikulal Jaiswal
Age 44 years, Occu. Business
R/o 121, Navi Peth,
Near Dena Bank, Jalgaon ... APPLICANT

VERSUS

Kishorkumar Vitthaldas Rajkotiya
Age 76 years, Occu. Nil,
R/o Block No.5, Flat No.101,
Amrit Apartment,
Bhikamchand Jain Nagar,
Jalgaon, District Jalgaon ... RESPONDENT

.....
Shri B.S. Deshmukh, Advocate for applicant
Shri G.V. Wani, Advocate for respondent
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CORAM: A.I.S. CHEEMA, J.

DATED: 5th January, 2015.

ORAL ORDER :

1. Heard counsel for applicant (original defendant) and
counsel for respondent (original plaintiff). This revision is taken
up for hearing finally.

2. The present revision has been filed challenging the

order dated 15.11.2014 passed in Misc. Civil Application No.198/2014, by Additional District Judge, Jalgaon. It appears that, suit of the respondent – landlord was decreed on 25.9.2013 and after the landlord took out execution proceedings, the appeal came to be tendered in the District Court with the delay condonation application. The delay condonation application has been rejected and thus, the present revision.

3. Point for consideration is :- Whether the applicant is able to show that the impugned order is illegal or suffers from material irregularity ?

4. Learned counsel for the applicant took me through the impugned order. According to him, the applicant has taken ground for condoning delay which was of 289 days, mentioning that, his Advocate Shri N.S. Joshi had filed application for certified copy, but although applicant was going and meeting the Advocate, the copy was not given and although the Advocate told the applicant that the appeal is being filed, the same was not filed and hence, the applicant had to engage another Advocate Mr. Kasar on 16.8.2014 in the Darkhast and the appeal came to be tendered on 13.10.2014. The learned counsel referred to the Misc. Civil Application, copy of which has been filed at Exhibit F. The learned counsel argued that the reasonings of the lower

appellate Court that the applicant should have filed the affidavit of Advocate Shri N.S. Joshi is apparently wrong as the applicant, for the stand he had taken, could not have filed the affidavit of the said Advocate Shri N.S. Joshi. Thus, according to the learned counsel, the revision needs to be allowed and the delay in filing of the appeal should be condoned.

5. Against this, the learned counsel for the respondent – original landlord argued that the appeal tendered was hopelessly barred, and referring to the application filed by the applicant in the lower appellate Court, the Advocate submitted that the applicant has taken a convenient plea of blaming the Advocate who is not before the Court so as to tide over the hopeless delay. According to the counsel, if the reply filed by the respondent in the lower appellate Court is perused, this respondent has clearly pointed out that in the Darkhast the new Advocate Shri Kasar was appointed on 16.8.2014 and if the applicant had already engaged another Advocate due to his differences with the earlier Advocate, still even after 16.8.2014 the appeal was not filed within one month and came to be filed only on 13.10.2014 and there also there is no explanation for the delay.

6. Having gone through the material placed on record, it can be seen from the application of the applicant filed before the

lower appellate Court that the applicant was claiming that the said Advocate Shri N.S. Joshi was the Advocate of the applicant for last ten years and had been conducting several matters for the applicant. Para 2 of the application (Exhibit F) shows, the applicant claimed that the Advocate Shri N.S. Joshi had filed application for certified copy of the judgment on 15.10.2013 and was called for copies on 18.10.2013. The applicant claimed that, after repeated attempts the certified copies were not given to the applicant. Still para 3 surprisingly mentions that finally the Advocate in May 2013 informed that certified copies had been obtained and that appeal will be filed. The applicant appears to have still laid back and did not ensure that the appeal was indeed filed. The learned counsel for the respondent is rightly pointing out that even when the new Advocate was engaged in the execution proceedings on 16.8.2014, the applicant did not take steps to ensure that the appeal is filed within one month even from that date.

7. The learned counsel for the applicant was unable to satisfy me as to why the Advocate who has been appearing for the applicant for last ten years in many matters would behave in the manner in which the applicant has tried to demonstrate in the application for condonation of delay. It is not natural that the Advocate would hold back the certified copies or would not file

appeal even after receipt of the certified copies for such old client. The claim made by the applicant does not appear to be bonafide. The grounds raised are not appealing. The trial Court has rightly rejected the application and there is no reason to interfere. The orders passed by the trial Court cannot be said to be illegal or having material irregularity. The revision application stands rejected.

(A.I.S. CHEEMA, J.)

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