

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 404 OF 2014

Smt. Shyalaja Prakash Nair

...Petitioner.

Versus

Mr. Vinay Shripad Kamat and others

...Respondents.

Mr. D. Pangam, Advocate with Mr. Luis Fernandes, Advocate for the petitioner.

Mr. Almeida Coutinho, Advocate with Mr. Shailesh Redkar, Advocate for the respondents.

Coram :- M. S. SANKLECHA, J

Date : - 31st March, 2015.

Order :

This petition under Article 226 of the Constitution of India is directed against the order dated 28 February, 2014, passed by the Civil Judge, Junior Division, Margao.

2. By the impugned order :

(a) the petitioner's application for condonation of delay of one day in filing a suit under Section 6 of the Specific Relief Act, 1963 (Relief Act), was rejected ; and

(b) the respondents' application under Order VII Rule 11 of the Civil Procedure Code, for rejecting the plaint on account of being time barred, was allowed.

3. On 5 December, 2012 the petitioner was wrongfully dispossessed from the suit house. On 5 June, 2013 the petitioner filed a suit under Section 6 of the Relief Act for recovering the possession of suit house. On 27 August, 2013 respondents filed a written statement and no plea of limitation was raised.

4. On 8 February, 2014 the respondents filed an application under Order VII Rule 11(d) of Civil Procedure Code, seeking rejection of the plaint. On 18 February, 2014 itself the petitioner also filed an application for condonation of delay of one day in filing the suit under Section 6 of the Relief Act.

5. By the impugned order, the learned trial Judge rejected the petitioner's application for condonation of delay in view of the clear mandate of Section 6 (2) of the Relief Act bringing a suit for possession under Section 6 of the Relief Act. However, the impugned order allowed the respondents application for rejection of the plaint on the ground that it is time barred.

6. Heard Mr. D. Pangam, learned counsel for the petitioner and Mr. A. Coutinho, learned counsel for the respondents and considered their submissions.

7. There can be no quarrel with the impugned order dismissing the petitioner's application for condonation of delay, in filing a suit under Section 6 of the Relief Act. This is for the reason that sub-section (2) of Section 6 of Relief Act itself prohibits a suit being brought after expiry of six months from the date of dispossession. However, the occasion to consider the condonation application would only arise if on proper interpretation of Section 6 (2) of the Relief Act the suit is beyond six months from the date of dispossession.

8. Mr. Pangam, learned counsel for the petitioner submits that there has been no delay in filing the suit as in terms of sub-section 2 of Section 6 of the Relief Act a suit must be brought before the expiry of six months from the date of dispossession and in such cases the date of dispossession has to be excluded in computing the period of six months. This is so provided in Section 9 of the General Clauses Act which provides for exclusion of the day when the cause of action arose. Attention was invited to the decision of the Supreme Court in *Tarun Prasad Chatterjee v. Dinanath Sharma reported in (2000) 8 Supreme Court Cases page 649*, wherein the Apex Court held that, the principle contained in Section 9 of the General Clauses Act, 1897 gives recognition to the well settled principle of construction of statute that ordinarily in computing the period of time prescribed the first day is

excluded and the last day is to be included. The rationale for this exclusion of the first day is for the convenience of the parties. The cause of action could arise at any point of the time in the day even late evening. Thus that day may not be available to the person aggrieved and for the above reason the day of the cause of action, stands excluded.

9. Section 6 of the Relief Act, specifically prohibits bringing a suit after the expiry of six months from the date of dispossession. Therefore, 5 December, 2012 being the date on which according to the petitioner, he was forcibly removed from the suit house would have to be excluded. In case that date i.e. 5 December, 2012 is excluded then the suit filed by the petitioner on 5 June, 2013 is within the period of six months from the date of forcible dispossession of the suit house. Thus, suit was filed within the period of six months from the date of dispossession i.e. the date of accrual of cause of action.

10. Mr. Coutinho, learned counsel for the respondents has opposed any interference with the impugned order on the ground that as the petitioner had filed an application for condonation of delay, there is no occasion for the trial Court to consider whether or not the suit was filed within six months from the date of dispossession. It is an admitted position and therefore the return of the plaint cannot be faulted.

11. It is settled position in law that there is no estoppel in law. On the face of the proceedings it is noticed that the plaint under Section 6 of the Relief Act, has been filed within six months from the date the cause of action arose viz. dispossession of the suit house. A party's incorrect understanding of the legal position does not entitle the other side to relief under Order VII Rule 11 of the Civil Procedure Code. Therefore the impugned order rejecting the petitioner's plaint is bad in law.

12. Accordingly, the impugned order dated 20 February, 2014 is quashed and set aside. The suit is restored before the trial Court. Further the trial Court is directed to take the plaint on record and dispose of the suit on merits in accordance with law.

13. Parties are directed to appear before the trial Court on 27 April, 2015 at 10 am. Petition disposed of in above terms.

M. S. SANKLECHA, J.

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