

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1137 OF 2015
IN
WRIT PETITION NO.216 OF 1999

Smt. Janabai @ Laxmibai Hari Kulkarni	]	
(Since Deceased) by heirs	]	... Applicants/ Ori. Respondents

Versus

Shri Kundlika Krishna Patil.	]	... Respondent Ori. Plaintiff
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Mr. Sandesh D. Patil for Applicants.

Mr. T. S. Ingale for Respondent (Original Petitioner in Writ Petition).

CORAM :- M. S. SONAK, J.

DATE :- JULY 02, 2015

P. C. :-

1. The Respondent in Writ Petition No.216 of 1999 seeks review of Judgment and Order dated 27/01/2015 by means of this Review Petition.

1. Mr. T. S. Ingale, learned Counsel for Respondents, points out that though these proceedings have been styled as 'Civil Application', they are in fact in the nature of a review. Accordingly, Mr. Ingale, by relying upon the Bombay High Court Appellate Side

Rules, objects to the consideration of this Review Petition, *inter alia*, on the following grounds :-

- (a) That there is delay of about 69 days in preferring the Review Petition and the same is not accompanied by a separate application seeking condonation of delay;
- (b) The certificate as contemplated by Rule 23 (3) of Chapter 4 of the Rules does not accompany the Review Petition.

2. Insofar as the first objection is concerned, normally, although application for condonation of delay has to be specifically made, such requirement need not be insisted in the facts and circumstances of the present case. This is because, the delay is of 69 days and the reasons therefor have been explained in para 24 of the Review Petition. Besides, there is a specific prayer seeking condonation of delay of 69 days in preferring the Review Petition. The cause shown is sufficient and consequently the delay is condoned.

3. Insofar as the requirement of certificate is concerned, Mr. Patil, learned Counsel for Review Petitioners, seeks leave to submit the same in the course of the day. Request is reasonable and hence the same is accepted. The objection, therefore, does not survive.

4. Writ Petition No.216 of 1999 was disposed of on 27/01/2015 on basis of the submission of the learned Counsel for both the parties that the decision in the case of ***Pandu Gopal Dange, since deceased through Lrs, Dattu P. Dange vs. Janabai @ Laxmibai***

*Hari Kulkarni since deceased through Lrs. Vasant H. Kulkarni*¹ will govern the facts and circumstances in Writ Petition No.216 of 1999. If the decision in the case of *Pandu Dange (supra)* is perused, it is clear that the same proceeds on the basis that the predecessor-in-title of the landlord i.e. one Anandibai had already applied under Section 31 of the Tenancy Act for restoration of possession vide Tenancy Case No.357 of 1957. The same was allowed on 14/08/1957 but the order dated 14/08/1957 was reversed by Appeal Court on 21/04/1958. In light of such fact situation, this Court held that once the landlord or his predecessor-in-title has availed of the right under Section 31 (1), there is no question of any further application under Section 31(3) r/w Section 32(f)(1)(a) at the behest of the legal representative of such landlord.

5. In this Review Petition, however, it is pointed out that the learned Counsel for Respondent No.1 in Writ Petition No.216 of 1999 incorrectly accepted the position that the facts and circumstances as prevalent in Writ Petition No.209 of 1999 were same as that in Writ Petition No.216 of 1999. Mr. Patil, learned Counsel for Review Petitioners (Respondent No.1 in Writ Petition No.216 of 1999) has submitted that there is no record of the predecessor-in-title of the landlord i.e. Anandibai ever having made application under Section 31 of the Tenancy Act and consequently, the application made by Janabai in 1967 was, the first application seeking restoration of possession. Mr. Ingale, learned Counsel for Petitioner in Writ Petition

¹ Writ Petition No.209 of 1999 decided on 23 January 2015

No.216 of 1999 has submitted that this is a disputed fact and for this purpose, records will have to be ascertained. The fact, however, remains that unlike Writ Petition No.209 of 1999 where documents/orders were readily available and acted upon, no such document or order in relation to proceeding allegedly taken out by Anandibai are readily available. In these circumstances, it does appear that the statement made by the learned Counsel for Respondent No.1, when Writ Petition No.216 of 1999 was disposed of on 27/01/2015, was mistakenly made.

6. In the aforesaid circumstances, it would be appropriate if the order dated 27/01/2015 is recalled and Writ Petition No.216 of 1999 is posted for final hearing. At the stage of final hearing, the learned Counsel for both the parties would obviously be at liberty to place on record the necessary facts and contentions in respect of their respective cases.

7. Accordingly, order dated 27/01/2015 in Writ Petition No.216 of 1999 is recalled. Writ Petition No.216 of 1999 is restored and directed to be placed for final hearing.

8. Civil Application is accordingly disposed of.

(M. S. SONAK, J.)