

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

CIVIL APPLICATION NO. 2347 OF 2014.

(For Restoration)

IN

CIVIL APPLICATION NO. 2908 OF 2008.

IN

WRIT PETITION NO. 4912 OF 2002

Appa Daryappa Kashikade
Since Deceased Through his
Legal heir-
Smt.Sitabai Appa Kashikade.

.. Applicant /
Ori. Petitioner

In the Matter between

Appa Daryappa Kashikade
Since Deceased Through his
Legal heir-
Smt.Sitabai Appa Kashikade.

.. Applicant /
Ori. Petitioner

Vs.

Balchand Lachchiram Pardeshi
Since Deceased Through his
Legal heirs-
Hirabai Balchand Pardeshi & anr.

.. Respondents

Mr.S.S.Inamdar i/b Mr.H.M.Inamdar, for the Applicant.
Mr.A.B.Tajane, for Respondent Nos.1 and 2.

**CORAM: N.M.Jamdar, J.
Saturday 18 April, 2015**

PC :

By this Civil Application, the Applicant seeks to restore the Civil Application No.2908 of 2008 and Writ Petition No.4912 of 2002 which was dismissed on 10 August 2009.

2 The Applicant is the tenant of the premises. The Respondent filed a Suit bearing no.217 of 1988 contending that the Respondent is the owner of the property and the deceased husband of the Applicant was tenant of the property. The suit was filed for eviction on the ground of default. Notice to that effect was issued on 10 February 1987. Thereafter the Applicant also filed Regular Civil Suit No.779 of 1989. It was contended by the Applicant in the said suit that he had obtained loan in the year 1978 and to satisfy the loan, the Respondent had asked to execute a sale deed. A suit was filed for declaration that the sale deed was executed on 7 September 1989 be declared as null and void. Both the suits were tried together by the learned Civil Judge and were disposed of by common Judgment and Decree on 1 October 1996. The suit filed by the Applicant was dismissed and the suit filed by the Respondent was decreed. The Applicant filed two Civil Appeals challenging the respective Judgment and Decree of the learned Civil Judge. The learned District Judge, by order dated 4 July 2001 dismissed the appeals. Thereafter the present petition was filed by the Applicant.

3 During the pendency of the petition, the Respondent expired on 28 April 2006. Civil Application was taken out by the Applicant

bearing No.2908 of 2008. In this Civil Application notices were issued on 14 January 2009. Thereafter by order dated 9 February 2009, office objections were directed to be removed within four weeks failing which application was to stand dismissed. Since the Applicant did not comply with the order neither removed objections, the conditional order became operative. Thereafter on 10 August 2009 the Writ petition itself was disposed of as no steps were taken to bring the heirs of the Respondent on record. The present Civil Application is taken out for recalling these orders, on 10 August 2014.

4 On 10 October 2014, at the request of the counsel for the Applicant, the application was taken up on production board. The Court was pleased to issue notice and protect the possession of the Applicant in the meanwhile. Thereafter by order dated 24 December 2014, the Applicant was directed to file additional affidavit explaining delay in filing the application and the matter was adjourned by six weeks.

5 The learned counsel for the Applicant sought to tender additional affidavit in the Court. The learned counsel for Respondent has opposed to taking the affidavit on record by stating that the affidavit was directed to be filed by order dated 24 December 2014 and is filed with delay of six months.

6 I have gone through the Civil Application and have heard the learned counsel for the parties. The cause made out in the

Application is that the Applicant is illiterate and is of old age and suffering from various ailments. The exact age of the Applicant is not specified neither the particulars of ailments that she suffers have been given, let alone filing any medical certificate. The manner in which the matter has progressed shows complete disinterest on the part of the Applicant. Firstly, no attempts were made to bring the heirs of the Petitioner -Appa Kashikade on record, in time. Thereafter even after dismissal of the petition, the application is taken up after five years.

7 To understand the case of the parties on merits, I have perused the Judgment and Order passed by the learned Civil Judge and the learned District Judge. As regards the findings that the sale deed in question is valid, the Applicant had filed a Second appeal. During the hearing before the District Court the position that if the Sale deed is held to be valid, the Applicant will become a defaulter as he had not paid rent at all, was accepted by the Applicant. To counter the submission of becoming a defaulter, the submission was advanced that the Respondent has not become the owner. There is a concurrent finding of fact in this regard in the proceedings filed by the Respondent. Therefore, even assuming indulgence is to be granted to the Applicant to consider the matter on merits, this finding of default in payment of arrears of rent becomes inescapable.

8 The Applicant had filed a Second appeal challenging the Judgment and Order passed by District Judge as regards the suit

filed by the Respondent holding that the Sale deed is valid. The Second appeal has also been dismissed on 19 October 2007. It has not been restored till date. The eight years time has lapsed since the dismissal of the Second appeal.

9 In the circumstances, not only there is complete negligence on the part of the Applicant in prosecuting the Writ petition, even on merits, in view of the dismissal of the Second appeal confirming the finding that the Sale deed is valid, by her own showing the Applicant is a defaulter, no interference is possible in writ jurisdiction. Therefore, no purpose will be served by restoring the petition, apart from the fact that no sufficient reason is made out for restoration. After dismissal of the petition valuable rights have accrued to the respondent landlord, which cannot be taken away lightly. Civil Application cannot be entertained and is rejected.

(N.M.Jamdar, J.)