

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7910 OF 2013

Shriram Vasant Naik.] ... Petitioner

Versus

Shri Chandradev Dakshni Singh.] ... Respondent

Mr. K. K. Jadhav for Petitioner.

CORAM :- M. S. SONAK, J.
DATE :- OCTOBER 01, 2015

P. C. :-

1. Heard Mr. Jadhav, learned Counsel for petitioner.
2. This petition is directed against the order dated 21/01/2013 by which the Division Bench of the Small Causes Court ('Appeal Court') has refused to condone delay of over 8 years in instituting the appeal against the *ex-parte* decree dated 07/04/2004 in R.A.E. & R. Suit No.541 of 199.
3. The petitioner had applied to the Trial Court for setting aside the *ex-parte* decree dated 07/04/2004 beyond the prescribed period of limitation. The application seeking condonation of about 178 days delay for setting the *ex-parte* decree was dismissed by the

Trial Court. As against the same, the petitioner instituted an appeal before the Appeal Court which was also dismissed. The petitioner then instituted Civil Revision Application No.823 of 2011 but on 28/06/2012, the petitioner chose to withdraw the same with liberty to file an appeal to challenge the *ex-parte* decree dated 07/04/2004 on merits.

4. Thereafter, the petitioner instituted the appeal before the Appeal Court and applied for condonation of delay of over 8 years in instituting the appeal. The main reason set out in this application was that the appeal was instituted within reasonable time from the date of the order dated 28/06/2012 by which liberty was granted to the petitioner to withdraw the Civil Revision Application and institute the substantive appeal.

5. In my judgment, there is no jurisdictional error in the impugned order by which the Appeal Court has declined to condone delay of over 8 years in instituting the substantive appeal. Undoubtedly, the period of 8 years duly include the period of appeal which the petitioner was unable to satisfactorily explain, when the petitioner applied for setting of the *ex-parte* decree. The Trial Court as well as the Appeal Court have concurrently held that no sufficient cause was made out by the petitioner to explain the delay of 178 days in applying for setting aside of the *ex-parte* order. The Civil Revision Application against the orders concurrently made by the Trial Court and the Appeal Court in the matter of such condonation of delay was

withdrawn by the petitioner. That apart, there is no sufficient cause indicated in the application made by the petitioner for the purpose of explaining the delay of over 8 years in instituting the substantive appeal. This Court, in making its order on 28/06/2012, merely acceded to the request of the learned Counsel for petitioner that the petitioner be granted leave to withdraw the Civil Revision Application with liberty to file appeal challenging the *ex-parte* decree on merits. In doing so, however, this Court made it clear that all points of contentions of the respective parties are kept open. In these circumstances, it was for the petitioner to explain the inordinate delay of over 8 years in instituting the substantive appeal and the Appeal Court was right in entertaining the objection of the respondent on the issue of condonation of delay.

6. It is true that normally in the matters of condonation of delay, a liberal approach is warranted. In this case however, the delay is of over 8 years. That apart, the cause shown is by no means sufficient. All the contentions of the petitioner have been duly considered by the Appeal Court. There is neither any jurisdictional error nor any perversity in the approach and decision of the Appeal Court. On the basis of several proceedings instituted by the petitioner, the respondent-landlord has not been able to execute the decree obtained by him on 07/04/2004. Any further indulgence, in the name of liberal approach, is not warranted in the facts and circumstances of the present case.

7. Mr. Jadhav, learned Counsel for petitioner, however, contended that in the present case, the *ex-parte* decree is a nullity because the suit premises have been declared to be a slum area under the provisions of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ('Slum Act') and no prior written permission from the competent authority was obtained before the institution of the suit. Such contention, cannot be entertained at this stage. There is a serious controversy with regard to the factual position. However if this submission of Mr. Jadhav is correct, then nothing precluded the petitioner from objecting to the execution of the *ex-parte* decree. However, it is made clear that this Court has not examined the aspect of slum declaration and consequent nullity. All contentions of all parties in this regard are kept open. On the basis of the contentions raised, however, there is no case made out to seek condonation of delay of over 8 years in instituting substantive appeal against the decree.

8. Mr. Jadhav also submitted that the respondent in the present case is not at all the landlord in respect of the suit premises. This submission is entirely misconceived. If indeed, the petitioner was serious about this submission, then the petitioner should have contested the case on merits. This contention, apart from being entire misconceived, is not at all relevant for the purpose of deciding whether any sufficient cause has been made out for condonation of delay of over 8 years in instituting the substantive appeal questioning the decree. Accordingly, this contention is rejected.

9. For the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Order.