

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

WRIT PETITION NO. 5358 OF 2013

Smt.Kamal Dattatraya Chandorkar & anr. ... Petitioners

v/s

Defence Accounts Co-operative Bank ... Respondent

Mr.Samrat Shinde along with Manoj Badgujar i/by Tejas Deshmukh
for the petitioners.

Ms.Sharmila Deshmukh for the respondent.

***CORAM: N. M. JAMDAR, J.
DATED : 6TH MAY, 2015***

ORAL ORDER:

By this writ petition, the petitioners challenge the order passed by the District Judge, Pune, dated 3 October 2012 rejecting the application for condonation of delay in filing an appeal against the order passed by the Small Causes Court, dated 6 August 2010, directing the eviction of the petitioners.

2 The suit premises are admeasuring 560 sq.ft. situated on the second floor of a building constructed on C.T.S. No.20/3, Sadashiv Peth, Tilak Road, Pune. The building is owned by the respondent bank and used as its office on the ground floor and on the first floor. The respondent bank filed a suit bearing No.328 of 2003 in the Small Causes Court, Pune, seeking eviction of the petitioners.

According to the respondent bank, the business activities of the bank had increased and had attained substantial growth, therefore, suit premises were required for housing the staff. It was also the case of the respondent bank that there were guidelines issued by the Reserve Bank of India so as to re-possess the premises given to the tenants for the purpose of increasing bank business activities. The written statement was filed by the petitioners and the case of the respondent bank was contested. It was the case of the respondent that the bank wants to reconstruct the premises. The learned Small Causes Court Judge framed issues as to whether the petitioners had not used the premises without reasonable cause for the continuous period of six months, whether the premises have been sublet and whether the respondent bank requires the premises for their bonafide requirement. As far as the grounds of non-user and subletting, the learned Small Causes Court Judge negatived the same. The learned Judge, however, found merit in the claim of the respondent as regard their bonafide need. The learned Judge found that, more hardship will be caused to the respondent bank if the decree is refused as the financial condition of the petitioners was sound. Accordingly, the learned Judge decreed the suit on 6 August 2010.

3 Thereafter, the petitioners filed an appeal in the District Court, Pune, on 26 April 2011, along with an application for condonation of delay. In the application for condonation of delay, it was averred that, after the suit was decreed, the clerk of the

Advocate one Mrs.Lata Bhongale was entrusted with the work of assisting in filing of new matters. It was stated that, entirely due to her mistake that, in spite of obtaining certified copies, the copies were not handed over. It was stated that, in spite of following up the matters with the said clerk, on numerous occasions she did not hand over the copies. Accordingly, the delay of 274 days was sought to be condoned. There was no other reason given in the application. The application was contested by the respondent bank. The theory of mistake of the clerk was questioned. It was stated that, no documents to substantiate the assertions have been produced on record. The learned District Judge, after considering the rival contentions, came to the conclusion that the proceedings were not diligently prosecuted, the cause made out is not sufficient and accordingly rejected the application by an order dated 3 October 2012.

4 Petitioner No.1 is of advanced age. Petitioner No.2, daughter of petitioner No.1, is a medical practitioner. Normally, this Court in any other jurisdiction considering these facts, would take a lenient view and condone the delay in filing an appeal. However, when the respondent has succeeded in the Trial Court on the ground of bonafide requirement, the rights accrued to the respondent in such matters cannot be lightly taken away. Speed at which the litigation should move, cannot be controlled by a party in possession to its own advantage. In case of bonafide requirement, delays cause serious prejudice to the parties who urgently need the premises.

Whether to take strict view or take lenient view regarding condonation of delay differs from case to case. Therefore, when the supervisory jurisdiction of this Court is invoked it will not be irrelevant to take into consideration whether the petitioners have any case on merits and what is their conduct. Therefore, the application for condonation of delay in such matters need to be carefully scrutinized, and cannot be mechanically allowed merely because one party deserves indulgence, and totally ignoring the rights and needs of the other party.

5 In the application itself, the petitioners have stated that they had time and again followed up with the said clerk, and in spite of the same the clerk did not respond. Both the petitioners are educated. It is not possible to believe that they would not know that an appeal will have to be filed within a reasonable period. If the clerk was not responding, the matter should have been taken up with the concerned advocate. Even though the petitioner No.1 is of advanced age, petitioner No.2 is not, and could have pursued the matter. The clerk is neither examined nor any affidavit of the advocate is filed. It is merely the word of the petitioners and a notice by the advocate which is placed on record. The concerned clerk is not even registered clerk of the advocate. The petitioners have shown complete apathy in prosecuting the appeal, and a clerk who is not even a registered clerk of the advocate, is being made a scapegoat. In absence of any other reason, it cannot be said that the learned District Judge took a perverse view while concluding

that the reason was not genuine. Then the only fact remains is the question of prejudice.

6 The respondent bank has succeeded in the Trial Court on the ground of bonafide requirement. The current premises are inadequate and additional premises are required so that it can serve its customers better. Reserve Bank has issued directions to resume tenanted premises, for expansion. It has come on record that the petitioner No.1, due to her advanced age, is being helped by the other family members, such as a grandson and petitioner No.2 who is a medical practitioner. Further more, the grandson of petitioner No.1, has taken an obstructionist proceedings in the executing Court claiming to be the successor on rights of tenancy. In the suit, the stand of the petitioner No.1 is that this grandson has no right but is staying there only to help her. The present appeal is filed only after execution proceeding was served on the petitioners. The grandson has taken out independent proceeding. The entire attempt of the petitioners is to somehow hold on to the premises. The decree is passed in the year 2010. The petition was adjourned so that the petitioners could indicate the merits of their challenge. Nothing is shown to dislodge the finding of the Trial Court that the premises are needed by the respondent Bank. The only argument was that the respondent intends to demolish the premises. The learned counsel for the respondent submitted that the Trial Court has held that the respondent Bank does not intend to demolish the premises as it is a heritage structure. The learned

counsel for the respondent has reiterated the stand that the respondent does not intend to reconstruct the premises. Since this statement is accepted, there is no case on merit for the petitioners as well. It appears that the petitioners only want to continue in the premises taking advantage of the delay in the judicial process.

7 In the circumstances, the view taken by the Appellate Court that the right accrued by the respondent bank cannot be taken away on such casual applications, cannot be held to be perverse. In any case, the respondent bank still have to contest the obstructionist proceedings filed by the grandson of the petitioner No.1.

8 The matter was adjourned for the learned counsel for the petitioners to take instructions whether the matter could be amicably resolved by granting longer time to vacate the premises, however, the learned counsel for the petitioners states that he has no instructions.

9 In the circumstances, the writ petition cannot be entertained and is rejected.

(N. M. JAMDAR, J.)