

Sequeira

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

CIVIL APPLICATION NO. 247 OF 2013.

(For condonation of delay)

IN

CIVIL REVISION APPLICATION (St.) No. 11825 OF 2013

Shri.Vilas Shankarrao Pingale & ors.

.. Applicants

Vs.

M/s Khyber Restaurant

Through its partner.

.. Respondent.

Along with

CIVIL REVISION APPLICATION No.242 OF 2011

M/s Khyber Restaurant

Through its partner.

.. Applicant

Vs.

Shri.Vilas Shankarrao Pingale & ors.

.. Respondents.

Mr.N.V.Walawalkar, Senior advocate i/b Mr.S.A.Rajeshirke, for Applicants in CAC No.247/13, CRA (St.) No.11825/13 & Respondents in CRA No.242 of 2011.

Mr.V.P.Sawant a/w Mr.Prabhakar Jadhav, for Respondent in CAC No.247/13 and Applicant in CRA No.242 of 2011.

CORAM: N.M.Jamdar, J.

Saturday 18 April, 2015

PC :

By this application, the Applicants seek condonation of delay of 741 days in filing the Civil Revision Application.

2 The Applicants are the landlord of the premises. Respondent is the tenant. The Applicants filed Regular Civil Suit No.839 of 1996 against the Respondent on the ground of default in payment of rent, bonafide requirement, alterations and permanent construction. The suit was filed in the Small Causes Court, Pune. The Judge, Small Causes Court by the Judgment and Order dated 24 July 1998 dismissed the suit. Thereafter the Applicants filed an appeal bearing No.679 of 1998 in District Court, Pune. The District Court upheld the ground of the Applicants that the Respondent had made permanent construction in the suit premises without permission and reversed the findings of the Small Causes Court. As regards the other grounds, i.e. default and bonafide requirement the District Court confirmed the finding of the Small Causes Court and held against the Applicants. The District Court accordingly, decreed the suit by Judgment and Order dated 21 December 2010 and directed the Respondent to hand over possession. Thereafter the Respondent filed Civil Revision Application No.248 of 2011 which was admitted by this Court on 3 August 2012 and interim relief in terms of prayer clause (c) was granted.

3 Thereafter the present Civil application along with Civil Revision Application is filed by the Applicants. The learned Senior counsel for the Applicants submitted that the Applicants were unsure as to whether the Applicants need to file an independent proceedings to challenge the findings given against them by the District Court or they would be able to challenge the same during the hearing of the Revision application filed by the Respondent. He

submitted that there was a change of advocates and the subsequent advocate advised them that considering the position of law, it would be appropriate if they filed an independent Revision application to challenge the finding. The learned counsel for the Respondent submitted that the Applicants will have to file an independent petition is deemed to have been known to the Applicants and the application discloses hardly any reason for condonation of delay.

4 The legal position as to whether a finding needs to be challenged by way of an independent proceedings or whether it can be during the hearing of an Revision application filed by the Respondent, is no means lucid and clear as far as the general litigant is concerned. There are various views as regards need to file independent proceedings in the Appellate Court, and the position in a revisional Court. This decision is bound to depend on a expert legal advice. Therefore, the ground made out that the Applicants went by the initial advice of their Advocate that it is not necessary to file a revision which was subsequently corrected, cannot be considered as a fanciful ground. Furthermore, the Revision application filed by the Respondent is admitted and decree of eviction is stayed. The only consequence that will ensue from condoning the delay is that the Applicants-landlord will be entitled to urge the entire case on merits at the time of hearing of the Application filed by the Respondent. Considering the reasons made out and the respective prejudice to the parties, I am of the opinion that equities can be balanced by condoning the delay upon

condition of payment of costs.

5 Accordingly, the Civil Application is allowed in terms of prayer clause (a) and (b). This indulgence however, is subject to the Applicants paying cost of Rs.20,000/- to the Respondent within a period of two weeks from today.

6 Place the Civil Revision Application (St.) No.11825 of 2013. on board for 'admission' as per its CMIS date i.e. 15 June 2015. Objections, if any, to be removed before the next date.

(N.M.Jamdar, J.)