

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4564 OF 2015

Shri Shivnarayan Narsu Kopellu & Ors. .. Petitioners
VS.
Smt. Zarina M. Patel & Ors. .. Respondents

Mr. S. A. Ghaisas i/b. Mr. A. M. Joshi for Petitioners.
Mr. H. S. Kazi i/b. Mr. Sameer Shaikh for Respondents.

CORAM : M. S. SONAK, J.
DATE: 23 SEPTEMBER 2015

P.C. :-

1] Rule. Rule is made returnable forthwith with the consent of
and at the request of the learned counsel for the parties.

2] The challenge in this petition is to the order dated 17 March
2015 by which the District Judge, Pune, has declined to condone
delay of 201 days in institution of the appeal by the petitioners
against the eviction decree dated 1 January 2014 made by the
Small Causes Court at Pune.

3] The delay was declined to be condoned mainly because the
application for condonation of delay was not accompanied by any
affidavit or medical certificate. Pursuant to leave granted by this
Court, the petitioner no.3 has filed an affidavit in this Court, along

with some certificates indicating that she has two minor school going children.

4] The delay in this case is of 201 days. The cause shown is that the petitioner was unaware of the decree made by the Small Causes Court until execution process was served upon her. The petitioner has stated that she is the only earning member of the family which comprises her old mother-in-law and two minor children born in the year 2001 and 2005 respectively. The petitioner has stated that she is engaged in domestic work at various places and that income from such domestic income is her only source of livelihood. The affidavit has stated that the mother-in-law had met with an accident and was bed ridden. By inadvertence, it was stated that the petitioner was herself bed ridden. In the affidavit it is explained that the minor children go to school and the petitioner has to work virtually throughout the day, as she is a domestic help and such work is the only source of her income.

5] In my judgment, the cause shown is sufficient, considering delay in institution of the appeal was of about 201 days. Financial constraints, coupled with medical and educational needs of the elderly and the children in the family, may have, in the present case, contributed to the delay of 201 days. Accordingly, sufficient cause is

made out to condone delay of 201 days.

6] The learned counsel appearing for the landlord however submitted that the conduct of the petitioners throughout the proceedings was one of negligence. No proper steps were taken to defend the suit for eviction and such negligence has continued even after the decree of eviction was made. The learned counsel for the landlord has placed reliance upon the decision of the Hon'ble Apex Court in the case of *H. Dohil Constructions Company Private Limited vs. Nahar Exports Limited & Anr.*¹ is distinguishable, in as much as in the said case, the delay was for about 1727 days and there was no cause shown for explaining such enormous delay. It is in these circumstances that the Hon'ble Apex Court has observed that delay could not have been condoned in the name of liberal approach.

7] No doubt, the respondent landlord is bound to suffer some prejudice on account of condonation of delay. Such prejudice can always be compensated by way of costs. Further, the learned counsel for the landlord has made a grievance that even the contractual rent at the rate of Rs.860/- per month has not been deposited by the petitioners. This, the petitioners shall have to make good.

1 (2015) 1 SCC 680

8] The Hon'ble Apex Court in the case of *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.*² and *State of Maharashtra & Anr. vs. M/s. Super Max International Pvt. Ltd. & Ors.*³ has held that once there is an eviction decree and stay is applied for the execution of such decree is pending can always be put to some terms with regard to deposit of reasonable compensation. In the present case, the suit premises are located in Camp area of Pune. No doubt, the suit premises admeasure about 120 sq. ft. or thereabouts. The circumstance that the petitioner is a domestic help is also a relevant circumstance. Considering all these aspects, it would be appropriate if reasonable compensation is determined at the rate of Rs.4,000/- per month, although, the case of the respondent landlord is that reasonable compensation should be in the range of Rs.8,000/- per month. Further, it would be appropriate that the Appeal Court is directed to dispose of the appeal expeditiously.

9] Upon cumulative consideration of all the aforesaid aspects, this petition is disposed of with the following order :

(A) The impugned order dated 17 March 2015 made by the District Judge -10, Pune is set aside. Delay of 201 days in

² (2005) 1 SCC 705

³ 2009 (5) ALL M.R. 1991

filing the appeal against decree dated 1 January 2014 in civil suit No. 445 of 2010 is hereby condoned;

(B) The aforesaid condonation is subject to the petitioner paying costs of Rs.10,000/- (Rupees Ten Thousand) to the respondent - landlord. Such costs to be deposited before the District Court within a period of six weeks from today. If costs are deposited, the respondent landlord shall be at liberty to withdraw the same unconditionally;

(C) The condonation of delay is subject to further condition that the petitioner deposits before the District Court the entire arrears of rent upto 1 January 2014 i.e. the date of the eviction decree. Such arrears to be deposited within a period of six weeks from today;

(D) There shall be a stay upon the execution of the eviction decree dated 1 January 2014, subject to the petitioners filing usual undertakings before the Appeal Court and further paying during the pendency of the appeal reasonable compensation at the rate of Rs.4,000/- (Rupees Four Thousand) per month. This shall be with effect from 1 April 2015. The arrears to be deposited within a period of three months from today. However, reasonable compensation at the rate of Rs.4,000/- (Rupees Four Thousand) per month to be deposited before the Appeal Court on or before 10th day of

each succeeding month;

(E) The parties are directed to appear before the Appeal Court on 5 October 2015 and produce authenticated copy of this order. From the date of production of authenticated copy of this order, the Appeal Court shall endeavour to dispose of the appeal as expeditiously as possible and in any case within a period of nine months from the said date.

(F) Rule is disposed of in the aforesaid terms. There shall be no separate order as to costs.

(G) All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka

CERTIFICATE

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