

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5260 OF 2014

Smt. Lalitabai N. Gupta & ors.

.. Petitioners

vs.

Mohan L. Walinjkar & ors.

.. Respondents

Mr. Y.S. Jahagirdar, Sr. Advocate i/b Mr. Rupesh Lanjekar for the Petitioners.

Mr. N.V. Walawalkar, Sr. Advocate i/b S.M. Sabrad for Respondent Nos.1, 3 to 6 & 8.

CORAM : M. S. SONAK, J.

DATE : 05 OCTOBER 2015.

P.C. :-

1] This petition challenges the order dated 22 April 2014 made by the District Judge-1, Vasai refusing to condone the delay of 11 years and 324 days in filing an appeal against the judgment and decree dated 21 October 2000 passed in R.C.S. No. 159 of 1997.

2] The Petitioners, in the application seeking condonation of delay has pleaded that there were talks of settlement going on between the parties and therefore, no appeal was preferred. It is also pleaded that in the meanwhile, the Petitioners had instituted Regular Civil Suit No. 49 of 2004 in the Court of Civil Judge, Junior Division at Vasai seeking declaration and injunction in respect of suit premises. It is also pleaded that the appeal has been instituted within a reasonable time from the date of issuance of warrant for

possession and that all this constitutes sufficient cause for not preferring the appeal within the prescribed period of limitation.

3] Mr. Y.S. Jahagirdar, learned senior advocate for the Petitioners, submitted that the cause shown was sufficient in the facts and circumstances of the case. The circumstance that the talks of settlement were in progress is borne out from the fact that though executing proceedings were instituted in the year 2004, the actual warrant of possession was issued only in the year 2012 and soon thereafter, the Petitioners have filed the appeal alongwith application seeking condonation of delay. In these circumstances, the learned senior advocate submitted that the Appeal Court has failed to exercise jurisdiction vested in it by refusing to condone the delay.

4] Having considered the submissions made by the learned counsel for the parties and perused the record, in my judgment, there is no jurisdictional error or perversity in the making of impugned order. In this case, the defence that there were settlement talks between the parties cannot be accepted. After the Trial Court made its decree on 21 October 2000, the Petitioners instituted R.C.S. No. 49 of 2004 seeking declaration and injunction in respect of very

suit premises. Significantly, in this suit, there was no averment or statement made with regard to any settlement talks. Besides, the settlement talks were indeed on, there was no reason to even institute Regular Civil Suit No. 49 of 2004. As such, the Appeal Court has rightly disbelieved the reason assigned by the Petitioners.

5] That apart, the Petitioners were very much aware of the institution of execution proceedings bearing Darkhast No. 39 of 2004 in the matter of execution of decree dated 21 October 2000. There is no material on record that the execution proceedings were deferred or adjourned with the consent of both the parties on the ground that some settlement talks were in progress. The circumstance that the warrant of possession was issued only in the year 2012, is really not a circumstance on basis of which it can be said that the delay in issuance of warrant of possession was on account of pending settlement talks. The landlord was pursuing the execution application and the Petitioners were pursuing R.C.S.. No. 49 of 2004 in respect of very premises in which the Petitioners have been ordered to be evicted by decree dated 21 October 2000. Therefore, this is clearly not a case where the Petitioners were either not aware of the impugned decree or of the pendency of execution proceedings.

6] Based upon vague averment that some compromise talks were going on or that improper advise was tendered by the lawyer, delay which spans over unprecedented 11 years and 324 days cannot be condoned, merely on basis that a liberal approach has to be adopted. There is neither any jurisdictional error nor any perversity in the making of the impugned order.

7] Accordingly, there is no case made out to interfere with the impugned order. This petition is dismissed. There shall, however, be no order as to costs. Ad-interim order granted earlier stands vacated.

(M. S. SONAK, J.)

dinesh

CERTIFICATE

**“Certified to be true and correct copy of
original signed Judgment/Order.”**