

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

**CIVIL APPLICATION NO. 134 OF 2008
IN
CIVIL REVISION APPLICATION NO. 1492 OF 2008**

Mr.R.J. Kothari since deceased through
his heirs and legal representatives

(1) Shri jayant R. Kothari & Ors.

.. Applicants

Vs.

Mrs.Katherine Gonsalves, since deceased
through her heirs and legal representatives

1. Mrs. Nancy Credo d/o. Mrs.Katherine
Gonsalves & Ors.

.. Respondents

Mr.Mandar Soman i/b Mr. Deepak G. Pandey for applicans.

Mr.Tejjpal S. Ingale for respondents.

**CORAM : K.R.SHRIRAM, J.
DATE : 18TH FEBRUARY, 2015**

P.C.

1 This civil application is taken out for condonation of delay in filing this civil revision application.

2 The impugned order was passed on 20th January 2005 and the certified copy was made available on 2nd March 2005. The applicants filed the writ petition bearing No.5119 of 2005 under Article 227 of the Constitution of India challenging the impugned order. The said petition was filed on 13th September 2005 and the same was admitted. Thereafter, this

Court, by an order dated 14th March 2007, held that the writ petition will not lie but a civil revision application under Section 115 of the Code of Civil Procedure has to be filed. Therefore, the applicants withdrew the said petition with liberty to file a civil revision application. While granting liberty, the Court has also observed that if the civil revision application was presented within a period of four weeks from that date, the period of pendency of this petition shall be taken into consideration for condonation of delay. Admittedly, the applicants did not file the revision application within four weeks time granted and has preferred this civil application on 21st June 2008.

3 The applicant no.1 has stated that he was not able to file the civil revision application within four weeks time provided because his daughter-in-law was not well and the applicant no.1 was taking care of his daughter-in-law.

4 The counsel for the applicants states that if the delay is condoned and the civil revision application is allowed, ultimately, possession would be restored to them. In the affidavit in reply, it is stated that the applicants are not using the suit premises at all and had kept it locked, unused which was clear from the findings recorded by the Courts below. In view of the said

findings, it is quite obvious that the intention of the applicants was only to drag on the matter.

5 Be that as it may, the decree has already been executed and possession of the suit premises has been handed over to the respondents on 22nd April 2008. This application is filed after possession was handed over. Therefore, hearing of the civil revision application and decision therein will also be purely academic.

6 In the circumstances, I see no reason to allow the civil application. The civil application is rejected.

(K.R. SHRIRAM, J.)