

Sequeira

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

CIVIL APPLICATION NO.236 OF 2013

(For Delay Condonation)

IN

CIVIL REVISION APPLICATION (St.) NO. 15932 OF 2013.

Shaikh Rahamatullah Abdul Shaikh.

.. Applicant

Vs.

Shri Deoman Rupanrayan Tiwari

Since deceased through Legal heirs

1A) Nandlal Deoman Tiwari & anr.

.. Respondents

Ms Yogita Deshmukh, for the Applicant.

None for Respondents.

CORAM: N.M.Jamdar, J.

Wednesday 22 April, 2015

PC :

By this Application, the Applicant prays that delay of four years and 304 days for filing the present Civil Revision Application be condoned. Notices were issued on 4 July 2013. Thereafter the heirs of the Respondents have been brought on record. Respondent No.1A and 1B are served. None appears for the Respondents.

2 The suit property is Room No.3 of Deoman Rupnarayan Tiwari Chawl, situated on C.T.S. No.403(pt), Washeri Hills, near Sunder Nagar, Goregaon, Mumbai. The Respondent instituted

R.A.E and R.Suit No.5013 of 1986 in the Court of Small Causes Court, Mumbai, for eviction of the Applicant. The Applicant filed Written statement and contended that description of the suit premises is incorrect and that there is no landlord-tenant relationship. It was stated that the suit premises are described as slum and requisite permission of authority is not obtained. The Small Causes Court on 20 September 2005 decreed the suit and the Appeal filed by the Applicant was dismissed on 18 April 2006. Thereafter the present Application is filed on 6 May 2013.

3 The Applicant has explained the delay in the Application as under -

“12) The Applicant states that after the dismissal of the said suit in the Small Causes Court the present Applicant had immediately preferred an Appeal and during the pendency of the said Appeal the said suit premises was demolished on 18/4/2006. The Applicant states that about 4 to 5 days prior to the Appellate Court's Judgment and Decree, the Applicant got retired from his job as a home guard. The Applicant states that at that point of time he was the only earning member of the family and the rest of the family including his 2 sons, a daughter and wife were totally depending upon his earnings as they were not earning anything at all. The Applicant states that the difficulties were rising in the family day by day and kept remainings were not sufficient to meet the increasing expenses of the family. The Applicant states that adding to this the Applicant's wife was suffering from Jaundice in the year 2008 and the complications of the same were increased in such manner that he had to spend huge amount to cure the same. The Applicant states that although the suit premises was demolished the Applicant genuinely was under bona-fide belief that he would be

held eligible for the permanent alternative accommodation in view of the documents in his possession and on the basis of the fact that he was in exclusive possession and occupation of the suit premise and was sincerely believing that he will surely succeed in the Appeal. The Applicant states that the Applicant was extremely busy in finding out affordable premises for his entire family and pursuing litigations single handedly, in the Hon'ble Small Causes Court as well as in the City Civil Court, Dindoshi at the same point of time. The Applicant states that the present Applicant did not lose hope when the Appellate Bench's Judgment was pronounced against him and he started paying more attention to the litigation filed in the Dindoshi Court as the prayer in the same was inclusive to seek permanent alternate accommodation. The Applicant states that from 2012 onwards his wife's physical condition started deteriorating again and her routine check-up sessions were increased. The Applicant states that on 16/12/12 the Applicant's wife's liver failed and she died on 18/12/12. The Petitioner craves leave to rely upon the death certificate of his wife as and when required. The Applicant states that the period of 2006 to 2013 was the most crucial period for him and for his entire family. The Applicant states that the family of the Applicant is surviving on the family remainings and has been receiving shocks aftershocks. The Applicant states that his last hope faded when the Dindoshi Court pronounced Judgment and Decree considering him to be eligible for permanent alternative accommodation but the same was refused and given to the present Respondent in pursuant to the Judgment and Decree passed by the Appellate Bench of the Small Causes Court. The Applicant states that he has filed substantive First Appeal in time in this Hon'ble High Court which is pending for admission. The Applicant states that the delay is caused due to the fact that, during the period of limitation the Applicant was surrounded by insurmountable difficulties. The Applicant states that he was jobless, shelterless and had hardly any money to pursue litigation further. The

Applicant states that all these circumstances kept him sufficiently busy therefore, he could not proceed against the Appellate Bench's impugned Judgment and Decree. The Applicant states when the last hope for permanent alternate accommodation was faded on the basis of present impugned Judgment and Decree. Therefore, he had not option left but to challenge the same."

4 In the meanwhile, the Mumbai Metropolitan Road Development Authority, has demolished the premises for road widening. The Applicant filed Suit No.2340 of 2005 in the City Civil Court, Dindoshi, in which an order of injunction is passed in favour of the Applicant. The question therefore now arises as to the entitlement to the permanent accommodation

5 The learned counsel for the Applicant submitted that even though the suit premises are demolished the Applicant is entitled to permanent alternative accommodation if the tenancy of the Applicant is not terminated. The learned counsel submitted that in view of the dismissal of the appeal, the MMRDA by order dated 29 June 2007 removed the name of the Applicant from the Annexure 2 and the eligibility of the Applicant to get alternative accommodation is lost. She submitted that inspite of applicant obtaining injunction against the Respondents, that MMRDA should not hand over possession to the Respondents, respondents have also not bothered to appear in that suit neither in the present Application. She submitted that as on date the permanent accommodation in lieu of the demolition of tenanted premises ,has not been handed over.

6 Considering the cause made out in the Application and the consequences that will ensue to the Applicant if the Civil Revision Application is not considered on merits and that inspite of service the Respondents have not appeared either in this Application , I am of the opinion that the applicant deserves a chance to be heard on merits. Accordingly, Civil application is allowed in terms of prayer clause (a).

(N.M.Jamdar, J.)