

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7162 OF 2014

Chandrakant S. Chatorkar & Anr.	..	Petitioners
VS.		
Vijendra R. Patadiya	..	Respondent

Mr. Atul Vanarse for Petitioners.

CORAM : M. S. SONAK, J.
DATE : 13 JULY 2015

P.C. :-

1] This petition is directed against the order dated 29 April 2014, by which the Small Causes Court at Pune, has condoned the delay in filing application for setting aside exparte decree.

2] The learned counsel for the petitioners states that the reason set out in the application seeking condonation of delay was false and therefore delay ought not to have been condoned.

3] Having considered the said submission, as also the record, there is no case made out to interfere with the impugned order. The impugned order came to be made after the parties recorded their evidence, in support of averments made in the application seeking condonation of delay. The exparte decree in the present case is made on 11 April 2012. Restoration was applied for on 20 September 2012. The case of the respondent is that he came to

know about the *ex parte* decree when he was served with process in the execution proceedings on 12 September 2012. On the basis of material on record, the Small Causes Court has accepted the case of the respondent that the respondent was unaware of the making of the *ex parte* decree. Hardly within eight days from the date of knowledge, the respondent has applied for setting aside the *ex parte* decree. Even overall, the delay in applying for setting aside is of about 150 days or thereabouts. The explanation offered does make out a case for sufficient cause. Accordingly, there is no jurisdictional error in making of the impugned order. A discretion has been exercised in a positive manner and there is no perversity or unreasonableness in the exercise of the same.

4] Applying the law laid down by the Apex Court in the case of *N. Balakrishnan vs. M. Krishnamurthy*¹, there is no case made to exercise revisional jurisdiction. Writ petition is accordingly dismissed. There shall be no order as to costs.

5] Further, considering that the suit was instituted in the year 2009, the trial Court is requested to dispose of the suit expeditiously.

(M. S. SONAK, J.)