

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

CIVIL REVN. APPLICATION NO. 812 OF 2014

Chetan Pravinkant Shukla
through his power of attorney)
Mr.Jayshankar Vardhishan ... Applicant

v/s

Nripen Ranjan Charkravarti & anr. ... Respondents

Mr.Vasantkumar G. Mehta for the applicant.

Mr.N.V. Bandiwadekar for the Resp.No.1.

CORAM: N. M. JAMDAR, J.

DATED : 29TH APRIL, 2015

ORAL ORDER:

Heard learned counsel for the parties.

2 By this revision application, the applicant prays that the order passed by the Additional Commissioner, Konkan Division, Mumbai, dated 28 April 2014, be quashed and set aside and the matter be remanded back to the competent authority.

3 The applicant filed proceedings before the competent authority for recovery of possession of the suit flat from the respondent No.1. The application was rejected by the respondent

No.2 - competent authority by order dated 27 April 2006. The competent authority opined that the applicant failed to prove his ownership as well as licensor and licensee relationship. The competent authority held that the main dispute appeared to be regarding ownership of the suit premises and it will be appropriate that the dispute between the parties is decided by the Civil Court.

4 Instead of challenging the order of rejection of the application by way of a revision as provided under Section 44 of the Maharashtra Rent Control Act, 1999, or a suit as directed, the applicant filed a civil revision application bearing No.655 of 2011. The revision application was filed along with the application for condonation of delay. It was initially dismissed for default, thereafter it was restored. After condoning the delay, the civil revision application was placed on board when it was permitted to be withdrawn by the applicant, by order dated 12 December 2011 as under :-

. *“The learned counsel appearing for the applicant seeks permission to withdraw this civil revision application with liberty to file a revision application under Section 44 of the Maharashtra Rent Control Act, 1999. Accordingly, the revision application is dismissed as withdrawn with liberty as prayed.*

2. *All contentions of the parties on merits are kept open.”*

5 Thereafter the applicant filed a revision bearing No.61 of 2012 before the Additional Commissioner. Before the Additional

Commissioner, it was contended that this Court has granted leave to file a revision application and there is no delay thereafter. The application for condonation of delay in filing the revision application was allowed by the Additional Commissioner by order dated 8 May 2013. The respondent filed Writ Petition No.6853 of 2013 challenging the said order. The writ petition was disposed by this Court on 4 September 2013, holding that the Additional Commissioner has not dealt with various contentions, also the contentions of the respondent as to whether delay could at all be condoned in law in view of the bar of Section 44 of the Act. The matter was remanded to the learned Additional Commissioner. Thereafter the revision was heard by the learned Additional Commissioner again. The learned Additional Commissioner by an order dated 28 April 2014 came to the conclusion that there is no provision to condone the delay if the revision application is filed beyond the period of 90 days and accordingly rejected the revision application. Thereafter the present civil revision application is filed by the applicant.

6 The revision before the Additional Commissioner is governed by Section 44 of the Act of 1999. The second proviso to the section suggests that no powers of revision at the instance of a person aggrieved, shall be exercised unless the application is presented within 90 days of the date of the order. Learned counsel for the applicant accepted the position that there is no question of applicability of Section 5 of the Limitation Act to the Section 44 of

the Act of 1999. He however contends that after the order of this Court dated 12 December 2011, there is no delay. He further submitted that in view of provisions of Order 23 Rules 1 and 2 of the code of Civil Procedure, in view of the liberty granted, the revision application filed before the Additional Commissioner has to be considered as within limitation.

7 These contentions cannot be accepted. Order 23 Rule 2 which applies to suit suggests that, after leave is granted if fresh suit is brought, it will be treated as if earlier suit was not filed, for the purpose of limitation. When the liberty was granted to the applicant to withdraw the revision application, there was no express direction as to waive the statutory bar of period of limitation contained in Section 44. Earlier, when the Additional Commissioner condoned the delay, it was challenged by the respondent by way of writ petition and while disposing of the petition, this Court had directed the Additional Commissioner to consider the question of limitation. If the contention of the applicant that in view of the leave granted by this Court, there was no delay, was accepted by this Court, there was no question of this Court, in the second writ petition, directing the Additional Commissioner to examine the applicability of the Limitation Act. This Court would have upheld the order passed by the Commissioner on 8 May 2013 if the Court was of the opinion that there was no delay in view of the liberty given by the Court earlier. This Court by order dated 4 September 2013 directed the

Commissioner to examine whether Limitation Act applies in spite of the order dated 20 December 2011.

8 The Additional Commissioner has taken into consideration the second proviso of Section 44 and has held that the revision was not filed within 90 days. In view of the language of Section 44, nothing stopped the applicant from taking clear direction from this Court while withdrawing the revision application that the delay be condoned. The statutory embargo cannot be overridden by implication. There will have to be a specific order to that effect. Even otherwise, it is debatable whether such direction could be issued. In the absence of any clear direction stating that embargo contained in second proviso of Section 44 will not apply to the revision proposed to be filed, the second proviso will have to be held to be applicable. The order of the Commissioner will have to be upheld.

9 The laws of limitation may appear to operate harshly, but they are rooted in public policy. If the applicant finds himself in a difficult situation, it is because of the creation of the applicant himself or incorrect legal advice at all stages. Nothing stopped the applicant from filing the revision before the Additional Commissioner or applying for the specific liberty when the revision application was withdrawn. The competent authority while disposing of the revision application has observed that the parties can get their rights decided in the Civil Court. Therefore, the

remedy of civil suit is always open to the applicant. The only indulgence that can be shown to the applicant is to observe that if the applicant files a civil suit now and if it is permissible to condone the delay, the question would be considered sympathetically in favour of the applicant. However, this is not to state that this observation will override any statutory embargo.

10 The civil revision application accordingly cannot be entertained and is rejected.

(N. M. JAMDAR, J.)