

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

WRIT PETITION NO.9430 OF 2015

Sudhir Krishnaraj Thackeray and others .. Petitioners

Versus

Mrs. Parvati Ramchandra Salian and others .. Respondents

Ms. Ranjana Parikh, for the Petitioners.

CORAM : R.M. SAVANT, J.

DATE : 24th NOVEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 17.02.2015 passed by the Appellate Bench of the Small Causes Court, Mumbai, by which order the application being MARJI No.766 of 2012 came to be dismissed. The said application was filed by the Petitioners seeking condonation of delay of 2945 days i.e. about 8 years in filing the Appeal against the judgment and decree dated 25.02.2004 passed by the Learned Judge of the Small Causes Court, Mumbai. By judgment and decree the said two suits i.e. declaratory suit filed by the husband of the Respondent No.1 herein i.e. Ramchandra Salian being RAD Suit No.1567 of 1993 came to be dismissed as well as the eviction suit filed by the Petitioners herein being LE Suit No.11/13 of 1994 came to be dismissed.

2. In so far as the RAD Suit No.1567 of 1993 is concerned, the matter was carried higher by the husband of the Respondent No.1 who was an employee of the Trust by filing an Appeal before the Appellate Bench of the Small Causes Court which Appeal came to be dismissed. Thereafter a Writ Petition filed by the heirs, as by then the said Ramchandra had expired was also dismissed. However, in so far as the Petitioners are concerned who are the Plaintiffs in LE Suit No.11/13 of 1994, they did not file an Appeal and are now seeking to file an Appeal which has occasioned the said delay of 2945 days in filing the same. In view of the fact that the said Appeal was suffering from the said huge delay that the instant application being MARJI No.766 of 2012 came to be filed by the Petitioner seeking condonation of the said delay, the Petitioners have set out the grounds in the said application. The grounds are inter-alia to the effect that the papers were handed over to an advocate for filing an Appeal and having regard to the findings recorded by the Trial Court, there was divergence of opinion regarding the course of action that was required to be adopted. It is further stated that the Petitioners were in dilemma as to whether fresh suit was required to be filed in the City Civil Court having regard to the finding recorded by the Trial Court or whether to file an Appeal before the Appellate Bench of the Small Causes Court against the decree of dismissal. However, they were

informed that the issue decided by the Division Bench of this Court as regards whether proceedings against a gratuitous licensee would lie before the City Civil Court or the Small Causes Court was pending before the Apex Court. It is further averred that the judgment of the Division Bench of this Court was no more good law in view of the Full Bench judgment of this Court holding that the proceedings against a gratuitous licensee are maintainable before the Small Causes Court under Section 41. However the said Full Bench judgment was also under challenge before the Apex Court. It is averred that at the relevant time one Parimal Thakar was the manager of the trust who was not keeping good health and had lost track of the matter. It is also averred that during the pendency of the Appeal original Defendant Ramchandra Salian died and his heirs were brought on record as the Respondents and therefore, the Petitioners were in a dilemma as to whether to file an Appeal arraying the heirs or whether to file independent proceedings against the heirs. It is lastly averred that on legal advise they have now been informed that the heirs of the original Defendant would have no right to occupy the suit premises and that the Petitioners have been advised to file a substantive suit for eviction before the Civil Court. It is also averred that on second opinion the Petitioners have been advised to challenge the order passed by the Trial Court in Appeal and that is how ultimately the Petitioners have decided to

challenge the order passed by the Trial Court by filing the instant Appeal. The said reasons did not commend acceptance to the Appellate Bench of the Small Causes Court who opined that merely because a litigant receives advice which later on turns to be incorrect in view of subsequent pronouncement of law by the superior Courts, such a litigant cannot press in aid the said fact as a sufficient ground for condonation of delay. As indicated above, the Appellate Bench of the Small Causes Court has by the impugned order dated 17.02.2015 rejected the application for condonation of delay.

3. It is required to be noted that the Petitioners herein are the trustees of a Charitable Trust and therefore, they have all the wherewithal at their disposal. The reason of conflicting legal advice does not stand scrutiny having regard to the extent of the delay in the instant matter. The delay of 2945 days i.e. about 8 years in filing the Appeal is not such a delay which can be condoned on the touchstone of the reasons mentioned in the application. Though it is well settled that a highly technical and pedantic approach should be avoided in the matter of condonation of delay, however, the fact remains that the approach of the Court has to be judicious taking into consideration the reasons mentioned in the application. The reasons mentioned in the application considering that they are coming from the trustees of a Charitable Trust which presumably

owns other properties in Mumbai can hardly said to constitute sufficient cause for condonation of the said huge delay of 2945 days i.e. about 8 years. It is also required to be noted that the Petitioners have filed independent proceedings in this Court being High Court Suit No.1406 of 2002 against the heirs of the said Ramchandra i.e. the Respondents herein for their eviction. The said suit it seems is now transferred to the City Civil Court on the pecuniary jurisdiction of the City Civil Court being enhanced. In my view, therefore, the order passed by the Appellate Bench of the Small Causes Court refusing to exercise discretion in favour of the Petitioners does not merit any interdiction at the hands of this Court in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]