

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7284 OF 2005

Sushila J. Tiwari @ Sushila Deonath Pande] ... Petitioner

Versus

Jagdish R. Halwai and Ors.] ... Respondents

Mr. I. S. Yadav for Petitioner.
Mr. S. M. Vyas for Respondent Nos.2, 4 and 5.

CORAM :- M. S. SONAK, J.
DATE :- OCTOBER 13, 2015

P. C. :-

1. Heard Mr. I. S. Yadav, learned Counsel for petitioner and Mr. S. M. Vyas, learned Counsel for respondent nos.2, 4 and 5.

2. This petition challenges the order dated 24/08/2005 made by the Competent Authority, Konkan Division, Mumbai, rejecting petitioner's application for recall of the order dated 03/11/2000, again made by the same Competent Authority. This petition was dismissed for default on 15/12/2005. The record-book indicates that the petitioner, after having obtained some interim relief, failed to take steps for effective service. Even as of now, some of the respondents have not been served. Several opportunities were

afforded to the petitioner to pursue the matter with diligence. However, the petitioner has not done so. Ultimately by order dated 28/09/2015, the petition was restored subject to payment of costs of Rs.25,000/-. Such costs were paid and the petition, which was instituted in the year 2005, has today come up for admission. It is to be noted that even earlier, the petition had been dismissed for non-prosecution on 30/11/2005, but the same was thereafter restored on the basis of assurance that steps would be taken by the petitioner. It is apparent that on account of the interim order made in this petition, the petitioner has continued to enjoy the possession of the suit premises, which, the Competent Authority, by its order dated 03/11/2000, had directed the petitioner to restore possession to the respondents i.e. Halwai. Once such interim order was obtained, the petitioner has failed to diligently pursue the matter, so much so that even 10 years after the petition was filed, some of the respondents remained to be served. It is in these circumstances, that Mr. I. S. Yadav, learned Counsel for petitioner was heard on the issue of admission and continuance of interim relief.

3. Mr. Yadav has submitted that there was sufficient cause shown for non-appearance on 15/07/2004 and therefore, the Miscellaneous Application in Original Application No.15 of 1996 should not have been dismissed. Mr. Yadav has submitted that there were compromise talks and on account such compromise talks that the petitioner or his Advocate did not remain present before the Court on some occasions. Mr. Yadav also handed in a xerox copy of a

document which purports to be an application made by the Halwais in R.A.E. Suit No.3448 of 1986 admitting that there were some compromise talks between the parties. On this basis, Mr. Yadav submitted that the impugned order dated 24/08/2005 by which the petitioner's application for recall of order dated 15/07/2004 should have been allowed.

4. Upon due consideration of the submissions made by Mr.Yadav and perusal of the record, in my judgment, no case is made out to entertain the present writ petition. As noted earlier, the conduct of the petitioner and the manner in which the petitioner has pursued this petition, does not entitle the petitioner any equitable relief under the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India. The petitioner, after obtaining *ex-parte* ad-interim relief, has not at all acted with due diligence to serve the respondents and on the basis of the interim order, continued in possession of the suit premises, which possession, the petitioner was directed to restore to the respondent way back on 03/11/2000. Thus, for a period of almost 15 years, the petitioner, on the basis of lack of diligence on her part, has continued to remain in possession of the suit premises and managed to delay the proceedings for over 15 years, in order to remain in such possession.

5. Apart from the conduct, it is to be noted that the petitioner obtained a decree of eviction in respect of the suit premises which was described as premises opposite to Room No.8, Nandlal

Bhaiya Chawl, Ceaser Road, Amboli, Andheri (W), Mumbai. In the execution of such order however, the petitioner evicted Halwai who was residing in Room No.8, Nandlal Bhaiya Chawl, Ceaser Road, Amboli, Andheri (W), Mumbai. Halwai, therefore, applied for restoration of possession. The Competent Authority appointed Court Commissioner. Ample opportunity was afforded to both the parties and ultimately, the Competent Authority ruled that in the course of execution of the order made by it, the Halwais were wrongly evicted from the suit premises which could never have been regarded as a suit premises in respect of which eviction order had been made. The Competent Authority, by its order dated 03/11/2000, allowed the application made by the Halwais and directed the petitioner to restore the possession to the Halwais.

6. The petitioner then filed Miscellaneous Application and on 15/11/2000, the Competent Authority stayed its own order dated 03/11/2000. The petitioner delayed the proceedings, in the first place by not effecting service, secondly by not attending the Court proceedings and thirdly by not leading any evidence in the matter despite grant of several opportunities. All this while, the petitioner enjoyed the benefits of ad-interim stay dated 15/11/2000. Thus, it is clear that the petitioner is in the habit of obtaining ad-interim relief and thereafter not proceeding with the matter on merits, so that the interim relief, which on most occasions is obtained *ex-parte*, is continued for indefinite period. This conduct is once again echoed in the present petition. The petition which was filed in the year 2005, is

required to be taken by for admission in the year 2015 precisely on account of such conduct of the petitioner.

7. Ultimately, the Competent Authority dismissed the Miscellaneous Application filed by the petitioner seeking recall of the order dated 03/11/2000. The petitioner then filed Miscellaneous Application No.16 of 2000 seeking a recall of the order dated 15/07/2004 by which such Miscellaneous Application was dismissed. The Competent Authority has considered the reasons stated by the petitioner. The Competent Authority has rightly disbelieved the reasons referred to by the petitioner. Even assuming that some compromise talks were on, the same are by no means sufficient to explain the lack of diligence on the part of the petitioner for a period spanning almost 4 years. There is absolutely no jurisdictional error or perversity on the part of the Competent Authority in making the order dated 24/08/2005. Accordingly, no case is made out. This petition is required to be dismissed with exemplary costs, particularly because the petitioner, on the basis of the interim order obtained by him on 20/10/2005, has continued in the possession of the suit premises and thereafter defaulted in pursuing this petition with the required diligence.

8. Accordingly, this petition is dismissed with costs of Rs.25,000/- (Rupees Twenty Five Thousand Only). The costs to be paid within a period of four weeks from today. The Competent Authority to ensure that such costs are paid by the petitioner to the

Halwais. The Competent Authority to take steps to execute its order dated 03/11/2000 in accordance with law but with expedition.

9. At this stage, Mr. Yadav seeks a stay on the execution of the order dated 03/11/2000. Considering the facts and circumstances of the present case, this is not a fit case for grant of stay. The petitioner, on the basis of an *ex-parte* stay granted by this Court on 20/10/2005, has continued to remain in possession of the suit premises and thereafter, has delayed these proceedings unreasonably. The matter was dismissed at least on two occasions for default and thereafter the same was restored. Even as of day, service has not been effected. The entire objective of the petitioner is to prolong the proceeding, retain the possession. In such circumstances, the petitioner, who does not comply with equity, cannot claim any equitable relief. Accordingly, the prayer for stay is declined.

10. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)