

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8760 OF 2014

Smt. Tarabai Ashok Pawar & Ors.	..	Petitioners
VS.		
Shri Bandu Laxman Umade	..	Respondent

Mr. K. P. Mali for Petitioners.
Mr. Sanjay A. Ghaisas h/f Mr. A. M. Joshi for Respondent.

CORAM : M. S. SONAK, J.
DATE: 01 SEPTEMBER 2015

P.C. :-

1] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

2] This Court, in its order dated 23 September 2014, had made it clear that endeavour shall be made to dispose of this petition finally at the stage of admission.

3] By the impugned order dated 28 August 2014, the Appeal Court has refused to condone delay of 197 days in instituting statutory appeal against decree of eviction made in Small Causes Suit No. 128 of 2012.

4] The Appeal Court has held that the petitioners came out with a false case that they were not aware of the proceedings before the Trial Court, when in fact one of the appellants i.e. Samson Ashok Pawar had deposed in the proceedings before the Small Causes Court.

5] Although the appellants ought to have been more accurate whilst drafting their application seeking condonation of delay, it does appear, that the case of the appellants was that the father of the appellants was dealing with the matter before the Trial Court. The appellants father expired on 9 February 2013 and the eviction decree was made some time in December 2012. In these circumstances, the appellants, were unable to take prompt steps for the purpose of institution of the appeal. The appellants however instituted the appeal no sooner they were served with the process in execution proceedings. If the application seeking condonation of delay is read and construed in its entirety, then it does not appear that the appellants had any intention of setting a false case, though, as noted earlier, the appellants should have been careful and accurate about the statements which they make in the application.

6] In matters of condonation of delay, it is very likely that there is some lapse on the part of the parties. However, that by itself, is not sufficient to deny the party adjudication on merits. In this case, it cannot be said that the cause shown is either frivolous or malafide. The appellants, really had nothing to gain by not appealing against the eviction decree. No doubt, the delay which is involved, will occasion prejudice to the respondent – landlord who has been successful in obtaining a decree of eviction. However, such prejudice can always be compensated by way of costs.

7] Therefore, upon cumulative consideration of the aforesaid facts and circumstances, the impugned order is set aside. Delay of 197 days in instituting the appeal is condoned. This is subject to the petitioners depositing costs of Rs.25,000/- (Rupees Twenty Five Thousand) before the Trial Court within a period of eight weeks from today. Once the costs are deposited, the respondent – landlord shall be at liberty to withdraw the same unconditionally.

8] It is made clear that in case costs are not deposited within a period of eight weeks from today, then this petition shall be deemed to have been dismissed without any further reference to this Court.

9] The parties to appear before the Appeal Court on 17 November 2015. The Appeal Court is requested to decide the appeal as expeditiously as possible and in any case within a period of six months from the date of deposit of costs by the petitioners. Further, the order earlier made by the Appeal Court staying the execution of the eviction decree, subject to the petitioners depositing compensation of Rs.1,500/- per month is continued until the disposal of the appeal.

10] Rule is made absolute to the aforesaid extent.

11] All concerned to act on basis of authenticated copy of this Order.

(M. S. SONAK, J.)

Chandka

C E R T I F I C A T E

“I certify that this Order uploaded is a true and correct copy of original signed Order.”

Uploaded by :
Ms. S. K. Chandka
P.S. to the Hon'ble Judge

Uploaded on: 02 September 2015