

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9765 OF 2015

Masari Solanki	..	Petitioner
VS.		
M/s. Rizvi Estates and Hotels		
Pvt. Ltd. & Anr.	..	Respondents

WITH
WRIT PETITION NO. 9781 OF 2015

Dukhilal Jagmohan Dhobi	..	Petitioner
VS.		
M/s. Rizvi Estates and Hotels		
Pvt. Ltd. & Anr.	..	Respondents

Mr. Ashish Gaikwad for Petitioners.
Mr. R. S. Apte – Senior Advocate i/b. Mr. J. D'souza with Mr. Rahil Shaikh i/b. Mr. Ravi Thankaia for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE: 27 OCTOBER 2015

P.C. :-

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

2] The challenge in these two petitions is to the common order dated 1 September 2015, by which the Appeal Court has declined to condone the delay in deposit of costs of Rs.5,000/- which were made a pre-condition for condonation of delay in instituting the appeals.

3] The delay is substantial. However, in matters of this nature, the length of delay is not the only parameter. What is important is the quality of the cause shown. In this case, the delay in instituting the appeal was admittedly condoned subject to payment of costs of Rs.5,000/-. There has been delay in the matter of payment / deposit of such costs. The explanation given is that there was a serious communication gap between the Petitioners and their Advocate. The Advocate failed to inform the Petitioners that delay had been condoned subject to this condition and therefore there was a lapse in the matter of payment / deposit towards costs. The explanation offered is neither unreasonable nor malafide. The Petitioners really had nothing to gain by not depositing the costs within a period prescribed. The Petitioners had applied for condonation of delay and ultimately the delay had also been condoned. In these circumstances, the Appeal Court has taken too harsh a view of the matters in declining to condone the delay.

4] It is further to be noted that the Petitioners in these cases, have really not gained anything out of the delay involved. This is because the eviction decree dated 7 January 2013 has already been executed in the meanwhile. The learned counsel for the Petitioners however submits that though eviction decree has been executed and the Petitioners are no longer in possession of the suit

premises, some of the belongings of the Petitioners continue to remain in the suit premises. At this stage, although the Petitioners have made out a case for setting aside the impugned order dated 1 September 2015, there is no case made out to enable the Petitioners to retain certain articles in the suit premises, when they themselves have been evicted from the suit premises. Admittedly, the Petitioners are not in possession of the suit premises. Permitting the Petitioners to retain some articles in the suit premises would mean and imply that neither are the Petitioners are in possession nor the landlords are able to make use of the suit premises. In the facts and circumstances of the present cases, obviously this cannot be countenanced.

5] The learned counsel for the Petitioners however expresses an apprehension that the Respondents might create third party rights or even proceed to demolish the suit premises. Now that the Appeals are being restored, it would be appropriate to direct the Respondent landlords that in case there is any proposal to create third party rights or to demolish the suit premises, they shall not do so, until they seek leave of the Appeal Court. The Appeal Court, in case leave is applied for, to consider whether such leave can be granted and if so, whether there is need to impose suitable conditions, in order to safeguard the interest of the Petitioners in so

far as the suit premises are concerned.

6] The Petitioners to pay to the Respondent landlords costs of Rs.10,000/- (Rupees Ten Thousand) within a period of two weeks from today. This shall be inclusive of the costs of Rs.5,000/-, which the Petitioners were required to pay as a condition for condonation of delay.

7] The impugned orders dated 1 September 2015 are therefore set aside. The two appeals are restored. The Appeal Court to dispose of the two Appeals as expeditiously as possible and in any case within a period of six months from the date of production of authenticated copy of this order.

8] The Petitioners are directed to remove the articles from the suit premises. The learned counsel for the parties agree that the Petitioners shall remain present at the site on 3 November 2015 at 11 a.m., in order to remove articles from the suit premises. The Respondent landlords or their respective representative to remain present at the site so as to facilitate the removal of the articles at the said date.

9] Parties to appear before the Appeal Court on 19 November

2015 and produce authenticated copy of this order.

10] Rule is made absolute to the aforesaid extent in both these petitions.

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

(M. S. SONAK, J.)

Chandka