

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12000 OF 2013

Ganpat Govind Panchal (Deceased)	]	
Santosh Ganpat Panchal.	]	... Petitioner

Versus

1. Chandrikabai Hublal Sharma (Deceased)	]	
a) Trilokinath Hublal Sharma and Ors.	]	... Respondents

Mr. Sujeet Kurup h/f Mr. Vinod Jadhav for Petitioner.
 Mr. M. J. Sharma for Respondents.

CORAM :- M. S. SONAK, J.
DATE :- AUGUST 31, 2015

P. C. :-

1. This petition challenges order dated 08/07/2013 by which the Appeal Court has declined to condone delay of 1359 days in preferring an appeal against decree dated 16/03/2006 ordering the Petitioner's eviction.

2. The learned Counsel for Petitioner has contended that the Petitioner was unwell, the Petitioner was not posted of the correct particulars by his Advocate and therefore, the delay. The learned Counsel has also contended that in the present case, the decree dated 16/03/2006 is a nullity because prior to the institution of R.A.E. & E. Suit No.3298 of 1989, the locality where the suit premises are located,

had already been declared as a slum are under the provisions of The Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 ('Slum Act'). The learned Counsel contended that if the decree dated 16/03/2006 is a nullity, the Petitioner should be afforded an opportunity to pursue the remedy of appeal, which is statutory right under the provisions of The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('Rent Act').

3. The circumstance that the Petitioner claims to have a good case to succeed on merits is not very relevant at the stage of deciding whether sufficient cause has been shown to prefer the appeal beyond the prescribed period of limitation. In this case, the delay is of 1359 days. The Appeal Court, has taken into consideration all the pleas raised by the Petitioner. On the aspect of lack of information from the Advocate, the Appeal Court has referred to the circumstance that the landlord, in the present case, had applied to the Competent Authority for consent under Section 22 of the Slum Act, before the decree dated 16/03/2006 could be put into execution. This application was duly served upon the Petitioner and the Petitioner, even contested the proceeding before the Competent Authority. Accordingly, it cannot be said that the Petitioner had no knowledge about the decree dated 16/03/2006 at least at the stage when the landlord applied for consent before the Competent Authority.

4. On the aspect of ill health, the Appeal Court has scrutinized the medical case-papers and has held that they indicate

that the Petitioner was taking treatment from February to June 2007. However, insofar as the balance period which is itself considerable, the Appeal Court has held that merely on the basis of some blood reports or urine test reports, it cannot be said that the Petitioner was in no position to institute an appeal within the prescribed period of limitation. The Appeal Court has also noted that the Petitioner had a son by name Santosh and it was easily possible for the said Santosh to pursue the matter after obtaining Power of Attorney. For all these reasons, the Appeal Court has held that no sufficient cause was shown to explain the delay of 1359 days in instituting the statutory appeal.

5. On the aspect of the impugned decree being a nullity, the said issue is quite irrelevant at the present stage. At the present stage, it needs to be seen whether the Petitioner has made out a sufficient cause to seek condonation of delay of 1359 days in instituting the statutory appeal. This, he has not. The impugned order made by the Appeal Court is neither in excess of jurisdiction nor is vitiated in any form of perversity. The aspect of alleged nullity, can always be raised by the Petitioner in the course of proceedings for execution of the decree dated 16/03/2006. If the Petitioner is in a position to satisfy the Executing Court that the decree dated 16/03/2006 is indeed a nullity, then perhaps, the Petitioner would succeed in thwarting the execution thereof.

6. It is, however, made clear that this Court has not examined this contention of nullity and accordingly, this issue is left

open to be determined by the Executing court, in case, the decree dated 16/03/2006 is put into execution and the Petitioner chooses to raise such a plea.

7. Subject to the aforesaid, this petition is dismissed. There shall be no order as to costs. Ad-interim relief is vacated.

(M. S. SONAK, J.)