

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 271 OF 2016

The Chief Executive Officer

Zilla Parishad, Osmanabad.

..... **APPELLANT**

V E R S U S

Govind Shrimant Kolge

Age : -----, Occ. Business,

R/o : Multipurpose shopping

Centre, Shop No. 10,

Osmanabad.

..... **RESPONDENT**

.....

Mr. P.P.More, Advocate for Appellant.

Mr. N.B.Jadhav, Advocate for Respondent.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 03/05/2016

JUDGMENT :

1. The Appeal is admitted. Notice after admission made returnable forthwith. By consent heard both sides for final disposal. No need was felt to call record and proceedings in view of the nature of order made by the District Court.

2. The appellant had filed R.C.S. No. 53/2005 in the Court of the Civil Judge [Jr.Division], Osmanabad for relief of recovery of rent and for possession of shop premises belonging to the Appellant – Zilla Parishad. It is the case of the appellant that there was an agreement to pay monthly rent and give annual increase in the monthly rent and the agreement was for fixed period. It was also contended that in case of default committed in complying the conditions of the agreement, right was given to the plaintiff to recover possession. The arrears of rent of amount of Rs. 64,800/- was claimed and possession of this shop was claimed. The defendant contested the matter. He admitted that he was in possession as a lessee but he denied that there was agreement between the plaintiff and himself. He contended that as the Govt. department, Public Works Department did not make the valuation, the defendant stopped paying rent. He denied that he was in arrears of rent of Rs. 64,800/-.

3. The trial Court decreed the Suit partly and held that the defendant was liable to pay only Rs. 11,000/- as the arrears of rent with the interest @ 10 %. The amount of Rs. 25,000/- which was with the plaintiff

of the defendant, was taken into consideration and it was held that the amount of Rs. 36,000/- was due from the defendant. The trial Court held that it was necessary to get the valuation done and as it was not done and as no default in complying any condition was proved, the decree of possession can not be given.

4. The aforesaid decision was given by the trial Court on 02/10/2010 and the Appeal came to be filed after the expiry of period of limitation and there was delay of 12 months 13 days. In the application filed for condonation of delay, the appellant contended that no knowledge of the decision was there to the appellant/plaintiff and then some time was required to collect copy of Judgment and Decree. The District Court considered the circumstance like absence of mention of name of the applicant on certified copy as the local body who had applied for certified copy. It is further observed that when the copy was ready on 28/08/2010, it was not collected till 09/10/2011 and so no sufficient cause was shown.

5. The dispute is in respect of immovable

property and possession of shop of local body was claimed. The circumstance that the Suit was partly decreed is sufficient to show that default was committed in making payment of agreed rent. No written agreement was produced by the plaintiff but that does not mean that there was no agreement at all and there could not have been any condition in the letters. In such case, the provisions of Transfer of Property Act are there and further there are provisions with regard to power of local body like Zilla Parishad under the said Act. Those provisions need to be considered and so it can be said that there is arguable case in the First Appeal.

6. The reasoning given by the District Court that the name of the plaintiff is not mentioned as the applicant in the stamp fixed for giving description of applicant, etc., is not convincing. There was no reason for making false contentions in this regard and further there is circumstance that copy was collected on 09/10/2011 and so it can be said that the local body need to take action against the concerned staff member. There is clear probability that staff member did not show due diligence. Such incidents are increasing. The Courts are expected to

keep in mind that property of local body belongs to the public and such matters can not be dismissed by making the observations which are made by the District Court. It needs to be observed that it is necessary for the local body like present appellant to take action against the staff member for the aforesaid lapse. This Court has no hesitation in observing that sufficient cause is shown for not filing Appeal in time. For giving opportunity to the Zilla Parishad to get decision on merits in respect of this case, this Court holds that the delay needs to be condoned. Further there is arguable case in favour of the appellant.

7. In the result, Second Appeal is allowed. Order made by the District Court in M.A. No. 260/2011 is set aside. The delay is condoned. The Appeal is to be registered as First Appeal in the District Court.

[T.V.NALAWADE, J.]