

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1922 OF 2016

**Smt.Radha Govind Amrite : Petitioner
versus
Life Insurance Corporation of India : Respondent.**

**Mr. Vijay Patil i/by Mr. S B Thorat for the Petitioner.
Mr. A A Shah for the Respondent.**

**CORAM : R. M. SAVANT, J.
DATE : 16th February 2016**

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 12/01/2016 passed by the Appellate Bench of the Small Causes Court by which order the MARJI Application No.714 of 2014 filed for condonation of delay of 84 days in filing the MARJI Application Stamp No.3303 of 2015 for setting aside the order dated 17/03/2015 passed in Revision Applications Stamp No.631 of 2014 came to be rejected.

2 The Petitioner herein is the original Plaintiff who has filed the suit in question being RAD Suit No.2090 of 2012 for a declaration of tenancy in respect of the premises being Flat No.115, Ground Floor, Building No.222, Goodwill Assurance Building, Manmala Tank Road, Mahim, Mumbai 400 016. The Petitioner herein is around 90 years of age and the proceedings in question are being prosecuted by her son Ram Govind Amrite on her behalf.

3 It seems that the application under Order VII Rule 11(d) of the Code of Civil Procedure came to be filed by the Respondent Life Insurance Corporation of India Ltd questioning the maintainability of the suit on the ground that the suit premises are the public premises within the meaning of the Public Premises Eviction Act, 1971, and therefore, in terms of Section 15 thereof the suit as filed is not maintainable.

4 The Trial Court adjudicated the said application and by the order dated 15/10/2013 upheld the objection and thereby rejected the plaint on the ground that the suit for declaration of title was not maintainable.

5 Aggrieved by the said order dated 15/10/2013, the Petitioner herein proposed to file Revision Application against the said order being Revision Application Stamp No.631 of 2014. However, since there was a delay of 7 days in filing of the said Revision Application, the Petitioner filed an application for condonation of delay being MARJI Application No.128 of 2014.

6 The Appellate Bench of the Small Causes Court by its order dated 19/08/2014 condoned the said delay of 7 days subject to payment of costs of Rs.500/- to be paid to the Respondent on or before 26/08/2014. It is the case of the Petitioner that there was a communication gap between the Petitioner

and her advocate on account of which the payment of the said costs within the said time frame was not intimated resulting in the said costs were not paid within the time stipulated by the order dated 19/08/2014 which resulted in the Revision Applications being dismissed by the Small Causes Court by the order dated 17/03/2015 for non-compliance of the order dated 19/08/2014.

7 The Petitioner thereafter filed MARJI Application Stamp No.3303 of 2015 for setting aside the order dated 17/03/2015. However, since there was a delay of 84 days in filing the said application, the Petitioner filed an application for condonation of delay being MARJI Application No.714 of 2015. The reasons why the delay had occasioned were mentioned in paragraph 3. It was the case of the Petitioner that his earlier advocate was not present in court on 19/08/2014 when the original order was passed and thereafter also on 17/03/2015 when the order dismissing the Revision Applications came to be passed. It is the case of the Petitioner that it is on account of non-cooperation and non-intimation by the earlier advocate that the steps could not be taken in the matter and the Petitioner after waiting till June 2015 has filed the said MARJI Application by engaging the present advocate.

8 The said application was opposed to on behalf of the Respondent-LIC by filing Reply and the reasons mentioned in the said application as contained in paragraph 6 were sought to be questioned.

9 The Appellate Bench of the Small Causes Court has rejected the said application by the impugned order dated 12/01/2016 for the reasons mentioned in the said order. The Appellate Bench of the Small Causes Court as the order discloses has observed that the Petitioner has shown defiance of the order dated 19/08/2014 by which the costs were imposed on the Petitioner. The Appellate Bench has further observed that in spite of the time being extended the Petitioner has not paid the said amount. The Appellate Bench has also used very strong words against the Petitioner which can be seen from paragraph 11 of the said order.

10 The learned counsel appearing on behalf of the Petitioner Shri Vijay Patil would make submissions in support of the delay of 84 days in filing the application being condoned. It was the submission of the learned counsel for the Petitioner that the Petitioner is 90 years old lady and it is on account of the communication gap between the Petitioner and her earlier advocate that the compliance of the order dated 19/08/2014 remained to be done. In so far as delay of 84 days is concerned, the learned counsel for the petitioner would contend that the Petitioner was in the hope that the earlier advocate would take steps for getting the said order dated 17/03/2015 set aside but ultimately had to engage another advocate which has resulted in the delay of 84 days.

11 Per contra, the learned counsel for the Respondent – LIC would support the impugned order. The learned counsel for the Respondent would contend that the reasons mentioned in the application hardly make out a case of sufficient cause and therefore no indulgence can be shown to the Petitioner.

12 Having heard the learned counsel for the parties, I have considered the rival contention. The issue is whether the delay of 84 days in filing the application for setting aside the order dated 17/03/2015 is required to be condoned. As indicated above, the Petitioner is faced with an order of rejection of his plaint passed under Order VII Rule 11(d) of the Code of Civil Procedure. It is against the said order that the Petitioner had filed the Revision Applications questioning the said order. Since there was 7 days delay in filing the Revision Applications, the said delay was condoned by the Appellate Bench of the Small Causes Court albeit on imposition of costs of Rs.500/-. The reasons mentioned by the Petitioner for the said delay in not depositing the costs and also for filing the MARJI Application No.714 of 2015 can be said to be plausible reasons for non-depositing the costs and non-filing of the application. In my view, since the Petitioner is faced with an order of rejection of his plaint it would be just and proper to give an opportunity to the Petitioner to prosecute the Revision Applications on merits. It is also required to be noted that the Revision Applications filed by the persons similarly situated as the Petitioner who were also faced with identical orders of rejection of the plaint

under Order VII Rule 11(d) of the CPC, the said Revision Applications have been allowed and it seems that the LIC has challenged those orders by filing writ petitions in this Court which are pending admission. It seems that the said writ petitions have been adjourned on the ground of correctness of the decision in *Suhas H Pophale v/s. Oriental Insurance Co. Ltd.* reported in (2014) 1 SCC 657 being referred to larger bench of the Apex Court which is pending. It is well settled that in matters of condonation of delay a highly technical and pedantic approach should be eschewed and the approach which furthers the case of substantial justice should be adopted. In the instant case, there is no dispute about the fact that there is non-compliance of the order dated 19/08/2014 as also there is delay of 84 days in filing the MARJI Application. However equities could have been balanced by the Appellate Bench of the Small Causes Court by imposing further costs on the Petitioner. In that view of the matter the impugned order dated 12/01/2016 is quashed and set aside. The MARJI Application No.714 of 2015 would stand allowed. In view of the fact that the Petitioner has shown her desire to deposit the costs of Rs.500/- as awarded by the Appellate Bench of the Small Causes Court by the order dated 19/08/2014, in my view, it would be just and proper also to allow the MARJI Application Stamp No.3303 of 2015. Hence the order dated 17/03/2015 passed by the Small Causes Court dismissing the Revision Application for non-compliance of the order dated 19/08/2014 would also stand set aside. The Revision Application Stamp No.631 of 2014 would stand restored to file.

However, the Petitioner is directed to pay costs of Rs.500/- as ordered by the order dated 19/08/2014 as also the additional costs of Rs.2000/- to the Respondent – LIC to be paid over to the learned counsel appearing for the Respondent Shri Akshay Shah within one week from date. The learned counsel for the Respondent – LIC states that he would accept the said costs on behalf of the Respondent – LIC. The above Writ Petition is allowed to the aforesaid extent and to stand disposed of.

[R.M.SAVANT, J]