

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 187 OF 2015**

Ghanshyam Jivatram Chatlani & Ors.

..Applicants

Vs.

Raghunath Gopal Deshmukh

..Respondent

Mr. P. N. Joshi for the Petitioners

Mr. Nitin Gangal for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 23rd FEBRUARY, 2016

P.C.

1 The Revisionary Jurisdiction of this Court is invoked against the order dated 4-3-2015 passed by the Appellate Bench of the Small Causes Court, by which the Appeal being Misc Appeal No.167 of 2013 filed by the Applicants / Defendants came to be dismissed and resultantly the order dated 6-8-2012 passed by the Trial Court rejecting the application under Order IX Rule 13 of the Civil Procedure Code, came to be confirmed.

2 The Applicants are the original Defendants in the Suit in question being R.A.E. & R. Suit No.257 / 461 of 2005. The said Suit was filed for eviction against the Defendants. The suit premises is a shop at Ranade Road, Dadar, Mumbai 400028. It seems that after the suit summons were served on the Defendants they filed their Written Statement in which they denied the case of the Plaintiff. After the filing of the Written Statement, the Defendants did not take any further part in the proceedings resulting in the Suit being

decreed exparte by the Trial Court by judgment and order dated 8-2-2011. The Defendants thereafter filed an application under order IX Rule 13 on 30-4-2012 for setting aside the exparte decree. In the said application the ground made out was that they had executed a power of attorney in favour of one Bharat Gulabrai Mansinghani and that they were labouring under an impression that the said power of attorney would appear in the Suit and take necessary steps to defend the Suit. It was further their case that the power of attorney neither informed them about the progress in the suit nor Advocate Mr. Dhorajiwala who was engaged to appear for the Defendants in the matter, resulting in the exparte decree passed against them. It was their case that only after the notice of execution was received by them that they became aware of the exparte decree that was passed against them. The said application came to be replied on behalf of the original Plaintiff and the reasons for the non appearance of the Defendants in the Suit as well as the delay in filing the said application, was questioned.

3 The Trial Court considered the said application and has by order dated 6-8-2012 rejected the said application. The reasons mentioned by the Defendants in the said application did not commend acceptance to the Trial Court. The Trial Court was of the view that the alleged power of attorney in favour of the said Mansinghani does not absolve the Defendants from making inquiries with their Advocate as regards the progress in the Suit and that

having not been done so, the justification given by the Defendants could not be accepted. The Trial Court also adverted to the fact that though the decree was passed on 8-2-2011, the application was filed on 30-4-2012 for which period also there was no justifiable reason given. The Trial Court accordingly by its order dated 6-8-2012 rejected the said application.

4 The aggrieved Defendants carried the matter by way of an Appeal before the Appellate Bench of the Small Causes Court being Misc Appeal No.20 of 2013. The Appellate Bench of the Small Causes Court considered the reasons put forth by the Defendants and tested the case of the Defendants. The Appellate Bench of the Small Causes Court held that the Defendants have not made out a case of sufficient cause for their non appearance in the Suit and also for the delay of about 14 months in filing the application. The Appellate Bench of the Small Causes Court also observed that even though the Defendants had allegedly executed the power of attorney in favour of the said Mansinghani, it was necessary on the part of the Defendants to make inquiries as regards the progress of the Suit. Having not done so, the Defendants could not lay the blame at the door of the power of attorney and their Advocate. The Appellate Bench of the Small Causes Court considered the judgments cited on behalf of the Defendants and came to a conclusion that the said judgments do not further the case of the Defendants and accordingly by the impugned order dated 14-3-2015 dismissed the Appeal.

5 The Learned Counsel for the Applicants Mr. Joshi made valiant attempts to convince this Court that the Applicants / Defendants have shown sufficient cause for their nonappearance in the Suit as well as for the delay in filing the application under Order IX Rule 13. The thrust of the submission of Mr. Joshi is based on the fact that the Defendants had executed a power of attorney in favour of the said Bharat Mansinghani who had defaulted in the matter of prosecuting the Suit for which the Defendants cannot be penalised.

6 In my view, it is not possible to accept the contention raised on behalf of the Applicants by the Learned Counsel Mr. Joshi. This is a case wherein the carelessness, negligence and indolence on the part of the Defendants in the matter of prosecuting is writ large. It is required to be noted that the premises are situated in Dadar, Mumbai which is a prime commercial and residential area. The Defendants alleged that they have executed the power of attorney in favour of the said Bharat Mansinghani. Significantly there is nothing on record in the Suit to indicate that the said power of attorney is prosecuting the Suit on behalf of the Defendants as the Trial Court has recorded a finding that there is no power of attorney on record. Why the Defendants had executed the power of attorney in favour of the said Mansinghani and the factum that the power of attorney has only seen the light of the day during the proceedings under Order IX Rule 13 therefore raises questions.

7 Be that as it may, taking the Defendants case at its face value, the fact that they had executed the power of attorney in favour of the said Bharat Mansinghani does not absolve the Defendants from making inquiries with the power of attorney or the Advocate who was engaged to appear in the said Suit. None of the kind was done by the Defendants as there is absolutely no material on record to show that any efforts were made by the Defendants to see that there is any progress in the Suit. The application under Order IX Rule 13 therefore appears to be an after thought. It is well settled that where discretion is required to be exercised, the same has to be done judiciously having regard to the facts and circumstances of the case. In the facts and circumstances of the case, it cannot be said that the orders passed by the courts below suffer from any error of jurisdiction or any other illegality or infirmity for this Court to exercise its Revisionary Jurisdiction. The Civil Revision Application is accordingly dismissed.

8 At this stage, the Learned Counsel for the Applicants seeks stay of the decree for sometime so as to enable the Applicants to approach the Apex Court. Since the execution proceedings have already been filed, the same are allowed to be proceeded with but possession not to be handed over for a period of 8 weeks from date.

[R.M.SAVANT, J]