

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6938 OF 2015**

Mr. Hemant Radhakrishna Sapale ..Petitioner

Vs

Shri Madhukar Dattatray Rege .. Respondent

Mr. Hemant Radhakrishna Sapale, petitioner present in-person.
Mr. Madhukar Dattatray Rege, respondent present in-person.
Mr. S.P.Dighe, Advocate (appointed) for Respondent.

CORAM : R.G.KETKAR,J.
DATE : 12/01/2016

PC:

1. Heard Mr. Hemant Sapale, petitioner in-person, Mr. Madhukar Rege, respondent in-person at length. As the respondent expressed his inability to speak, at his request I appointed Mr. S.P. Dighe to appear on behalf of the respondent. Mr. Deghe graciously accepted the request. I have heard Mr. S.P.Dighe.

2. By this petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'plaintiff', has challenged the judgment and order dated 15.4.2015 in MARJI Application No.315 of 2014 to the extent of imposing condition of depositing Rs.10,000/- by way of costs while condoning delay as also the order dated 30.4.2015 in MARJI Application No.116 of 2015 rejecting his application for modification of order dated

15.4.2015 thereby waiving the condition of depositing costs of Rs.10000/-.

3. Plaintiff's father had instituted R.A.E.&R. Suit No. 6042/1977 in the Small Causes Court against the respondent, hereinafter referred to as 'defendant', for recovery of possession of tenement no.12 on first floor, Ganga Niwas, N.B.Road, Malad (W), Mumbai (for short, 'suit premises') on two grounds : (1) arrears of rent from 1.1.1977 to 30.9.1977 at the rate of Rs. 48.11 and (2) the defendant acquiring a suitable alternate residence.

4. On 23.8.2014, the learned Judge presiding over Court Room No.34 of the Small Causes Court passed order below Exh.29 directing the plaintiff to file evidence on the next date failing which the suit will stand disposed of on the next date. The plaintiff filed application Exh.30 for setting aside order dated 23.8.2014 below Exh.29. That application was rejected on 20.9.2014. On the same day, the learned trial Judge passed order below Exh.1 dismissing the suit in default.

5. The plaintiff challenged the orders dated 20.9.2014 passed below Exh.30 and Exh.1 by filing appeal before the Appellate Bench of the Small Causes Court. In that Appeal, he took out Marji Application no.315 of 2014 for condoning the delay of 55 days in filing the appeal. By the impugned order dated 15.4.2015

the Appellate Bench allowed the application and condoned the delay on depositing Rs.10000/- by way of costs. After depositing that amount within 15 days from the date of the order, the same was ordered to be paid to the respondent-defendant and office was directed to register appeal after due compliance of the said order.

6. The plaintiff thereafter filed Marji Application No.116 of 2015 for waiving the condition of awarding costs of Rs.10000/-. That application was rejected on 30.4.2015. it is against these orders dated 15.4.2015 and 30.4.2015, the present petition is instituted.

7. Mr. Sapale reiterated the submissions that were advanced before the courts below. He submitted that his financial condition is not sound. He is not in a position to engage Advocate and pay his fees.

8. On the other hand, the respondent in-person opposed the petition on the ground that the plaintiff has not established that his financial condition is not good. He has not produced any material to substantiate the said case, save and except his bare words. The plaintiff is filing proceedings against him only to harass him. He submitted that while condoning the delay the learned trial Judge was fully justified in imposing condition of payment of costs and therefore the Appellate Bench was justified

in rejecting the subsequent application for waiving that condition. Mr Dighe also submitted that having regard to conduct of the plaintiff and also the fact that the suit is pending since 1977, the Appellate Bench was justified in imposing the costs and no case is made out for invocation of powers under Article 227 of the Constitution of India.

9. I have considered the submissions advanced by the parties in-person as also by Mr Dighe. As noted earlier, the plaintiff's father had instituted suit in the year 1977 and till date suit is pending. The delay in disposing of the suit will not enure to the benefit of the plaintiff who is the landlord and will rather enure to the benefit of the defendant who is tenant in the suit premises. That apart, against order dated 20.9.2014 passed below Exh.30 and below Exh.1, the plaintiff preferred appeal. Since there was delay of 55 days, he took out application for condonation of delay. That application is allowed subject to payment of costs of Rs.10,000/-. The defendant did not point out that he has challenged the order dated 15.4.2015 condoning the delay. In view thereof, in my opinion, the Appellate Bench was not justified in imposing costs of Rs.10,000/-, more so when (1) the petitioner appeared in person, (2) delay is of 55 days and (3) by causing delay, no benefit will enure to the plaintiff.

10. In view thereof, condition imposing deposing costs of

Rs.10000/- by way of costs in the order dated 15.4.2015 is set aside and MARJI Application No.315 of 2014 stands allowed with no order as to costs. In view of this, order dated 30.4.2015 in MARJI Application No.116 of 2015 is also set aside. Mr. Sapale stated that he will make application before the Appellate Bench of the Small Causes Court for appointing Advocate on his behalf through Legal Aid Committee. If such application is made, the Appellate Bench is requested to pass appropriate order thereon. Rule is made absolute in aforesaid terms with no order as to costs. The Court places on record the assistance rendered by Mr. Dighe.

(R.G.KETKAR, J.)