

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1455 OF 2016

IN

WRIT PETITION NO.8167 OF 2004

(Subhada Shashikant Kuvalekar (decd) through Niket S. Kuvalekar and others Vs. Indirabai Balbhim Kulkarni (decd) through Manohar B. Kulkarni and others)

Office Notes, Office Memoranda of Coram, appearances, Court's orders, or directions, and Registrar's Orders	Court's or Judge's orders
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Mr. Hitesh P. Vyas for Applicants.
Mr. S. N. Chandrachud for Respondents.

CORAM : R. G. KETKAR, J.**DATE : 22ND JUNE, 2016****P.C.:**

Not on Board. At the request of Mr. Vyas, taken up for orders.

2. Heard Mr. Vyas, learned Counsel for applicants and Mr. Chandrachud, learned Counsel for respondents.

3. This is an application for recalling the order dated 15.06.2015. By that order, the Petition was dismissed in default as none appeared on 08.06.2015 as also on 15.06.2015.

4. Mr. Vyas submitted that after hearing both sides, this Court admitted Writ Petition on 03.10.2005. He,

therefore, submitted that for the reasons stated in the application, the order deserves to be recalled thereby restoring the Petition to its original position.

5. On the other hand, Mr. Chandrachood strenuously opposed the application. He has invited my attention to the affidavit in reply filed by the respondent No.1(D) dated 16.06.2016. He submitted that in the past, Civil Application No.2766 of 2009 was taken out for bringing legal representatives of original respondent No.1 landlady / plaintiff - Ms Indirabai Kulkarni. She expired on 25.12.2005. Application for bring legal representatives on record was filed on 23.09.2009 and there was delay of 1277 days. He submitted that in paragraph 2(A) of the reply, it is specifically asserted that the reason given in that application that the applicant was diligent in prosecuting the Petition was factually incorrect and false.

6. Mr. Chandrachood further submitted that report dated 18.06.2016 of Nazir shows that applicants had deposited the rent upto December 2014 and thereafter they have not deposited any amount. Even on this count, applicants do not deserve any indulgence.

7. He further submitted that even present application suffers from gross delay and laches of 366 days. It is only after receipt of warrant of possession, the applicants have moved this Court for restoration. In substance, he submitted that the approach of the applicants is casual and

also depicts gross negligence on their part. For all these reasons, he submitted that application deserves to be rejected.

8. Mr. Vyas assures that within one week from today, applicant will deposit the arrears of rent from 01.01.2015 till 30.06.2016 in the trial Court under intimation in writing to the Advocate appearing for the opponents and that applicants will not seek further extension of time. He further assures that from July, 2016, applicants will go on regularly depositing the rent in the trial Court under intimation in writing to the Advocate appearing for the opponents, on or before 10th day of next succeeding month. It is understood by the applicants that in case the applicants commit two consecutive defaults, the interim order shall stand vacated without further reference to the Court and the opponents will be at liberty to execute the decree.

9. Having regard to the fact that the Petition was admitted after hearing both sides, I find that the applicants have made out sufficient cause for restoration of the Writ Petition and for granting reliefs in this application. Reliance placed by Mr. Chandrachud on paragraph 2(A) of the reply is without any merit as notwithstanding this fact, no attempts were made by the opponents for recalling the order dated 20.11.2009. It is, therefore, not open to the opponents to go beyond that order. As far as the arrears of rent is concerned, in view of the assurance as also the

conditional order which I have passed is no ground for dismissing the Civil Application which has the result of dismissing the Petition on technical grounds and not on merits. In view thereof and in order to do substantial justice to the parties, Civil Application is allowed in terms of prayer clauses (a) and (b) with no order as to costs. Writ Petition No.8167 of 2004 is restored to its original position.

10. It is made clear that in case the applicants do not deposit arrears of rent within one week from today in the trial Court as also do not go on regularly depositing the rent from July 2016 and committing two consecutive defaults, the interim order shall stand vacated without further reference to the Court. The trial Court shall invest the amount so deposited by the applicants. Order accordingly.

11. In view of the order dated 30.08.2013, office is directed to add this matter in the weekly board commencing from 04.07.2016. Office to call for R & P, telephonically. Office to accept compilation.

(R. G. KETKAR, J.)