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

WRIT PETITION NO. 13347 OF 2016

Mr. Suresh P. Thadani and Anr. ... Petitioners.

V/s.

Mr. Brig. Adi Aspandir Irani
(Since deceased, through his L.Rs.) & Ors. ... Respondents.

Mr. Nikhil Vidwans for the Petitioners.
Mr. Abhijit Kulkarni for Respondents 1 to 4.

CORAM : N.M. Jamdar, J.

22 December, 2016.

Oral Order :-

Heard the learned Counsel for the parties. By this Petition the Petitioners challenge the order passed by the learned District Judge, Pune dated 16 February 2016 dismissing the Application for condonation of delay of 131 days in filing an Appeal.

2. In ordinary circumstances, delay of 131 days would be been favorably considered but the facts of the present case indicate otherwise.

3. The Respondents – Plaintiffs filed a Suit bearing No. 74 of 2003 seeking possession of the suit premises from the Petitioners. The Suit was filed on the ground that the premises have not been occupied and have been kept lock for more than six months preceding the filing of the suit. It was stated that the premises were originally let out to Mr. Thadani, who was the tenant and after he has passed away, the premises have not been occupied. It was stated that the Respondents – Plaintiffs are old and need the premises. The Suit was decreed by the learned Civil Judge by judgment and order dated 27 August 2014. The learned Civil Judge held that the premises were not being used for the specified period. An Appeal was filed by the Petitioners, application for condonation of delay has been dismissed by the impugned order.

4. The learned Counsel for the Petitioners submitted that the Petitioner is in need of the premises and the premises in her possession are not adequate. It was submitted that the Petitioners can be put to terms and the delay can be condoned which is not of long duration. The learned Counsel for the Respondents on the other hand vehemently opposed submitting that, after the death of the earlier tenant, son and daughter are settled elsewhere and the Petitioner's daughter is residing at her husband's place, for which documentary evidence has been produced. It was submitted that the

Appeal itself was not moved, and even in this Court, only after execution proceedings have been filed, that the matter has been moved. It was contended that it is only to extract some monetary consideration from the Respondent – landlord that a claim has been made by the daughter of the original tenant.

5. It can be lost sight of that the decree has been passed on the ground of non-user. A finding of fact recorded by the Trial Court that the premises are not being used. Possession of the suit premises sought also on the ground of bonafide requirement. Therefore, the delay in such matters cannot be mechanically condoned and the resultant prejudice to the Respondent – landlord cannot be lost sight of. The condonation of delay is not a matter of right and is an indulgence extended by the Court.

6. As far as the Petitioner No.1 is concerned, it has been recorded by the learned Civil Judge that he has his own independent premises and the Petition is more particularly pressed on behalf of Petitioner No.2. The learned Counsel for the Respondents has placed on record the Certificate of Baptism of the daughter of the Petitioner No.2 which gives the address of Bhawani Peth which is the address where the Petitioner No.2 stays with her husband. The Trial Judge has noted the ration card was not produced, which would have indicated the fact that Petitioner No.2 is staying at Bhawani

Peth. The learned Small Causes Court has also taken note of the electricity bill. The contention of the learned Counsel for the Petitioners that the premises are needed is of no relevance as what is sought to be challenged of non-user and these documents which are placed on record indicate that the Petitioner No.2 is also residing elsewhere. Considering the position, since the Petitioner No.2 is staying with her husband at Bhawani Peth, to balance equities, it was put to the learned Counsel for the Petitioner, by way of an equitable arrangement, the Appeal can be restored and a Receiver can be appointed and the Respondents can be put in possession as an agent of the Receiver, subject to the outcome of the Appeal. The learned Counsel for the Petitioners had taken time and the matter was kept today. The learned Counsel for the Petitioners took instructions from the Petitioner No.2, who is present in the Court, submitted that the Petitioners are not acceptable to this suggestion of the Court.

7. In the circumstances, the Court is left with no choice but to uphold the objection of the Respondent, confirm the impugned order and dismiss the Writ Petition. The Writ Petition is accordingly rejected.

(N.M. Jamdar, J.)