

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

***CIVIL APPLICATION NO. 246 OF 2015
IN
REVIEW PETITION (ST) NO. 17926 OF 2014
IN
APPEAL FROM ORDER NO. 787 OF 2013***

Savitaben Lallu
v/s

... Applicant/Appellllant

Champuben Balambhai Patel & ors. ... Respondents

Mr.Rustam Paradiwala i/by K.S.Irani for the applicant and petitioner
in review petition.

Mr.Sandeep Waghmare for Resp. Nos.1 to 3 and 5.

Coram: N.M. Jamdar, J.

Dated: 29 July, 2016

P.C.:

The civil application is taken out for condonation of delay in filing the review petition. The review sought is of the order dated 27 January 2014 passed by the learned Single Judge (Smt.Vasanti Naik, J.), in Appeal from Order No.787 of 2013. While disposing of the appeal from order, the learned single Judge did not interfere with the use of discretion by the learned Civil Judge, Senior Division, Daman, in granting the order of injunction restraining the Appellant from disturbing the possession of the Respondents/Plaintiffs, during the pendency of the suit.

2 It has been time and again noticed by this Court that, when a concerned learned Judge is not available at principal seat, without giving any explanation, re-hearing under the garb of review is sought. Therefore, I had examined the application for condonation of delay as to ascertain the reason why the application could not be moved when the learned Single Judge was available. In the application, the reason given is, there was a change of advocate and after the change of advocate, the new advocate advised to him to file a review and, therefore, there was delay. In the context of what is stated above, this reason is entirely unsatisfactory.

3 Even assuming the review petition is to be considered on merits, I do not find any merit in the same. The scope of appeal from order against the discretionary order passed by the Trial Court, is limited, as laid down by the Apex Court, in the case of *Wander Ltd. v/s Antox India (P) Ltd.*¹ It is only to ascertain whether the use of discretion is perverse. The learned Judge has taken a view that the use of discretion is not perverse. In any case, the order of injunction is operating for the last three years and the suit is already expedited, and at this stage, the injunction cannot be vacated. After the order under review was passed, the Appellant had adequate remedy to challenge the order immediately in appeal.

1 1991 (11) PTC 1 (SC)

4 Considering all these circumstances, I do not find any merit in the application for condonation of delay and even if delay is condoned, the review petition cannot be entertained for the reasons stated above. All the questions that the Applicant seeks to urge on merits, the Applicant can always urge in the suit which is pending.

5 Keeping all contentions of the parties open, the civil application for condonation of delay is rejected. The review petition consequently does not survive and is disposed of.

(N. M. Jamdar, J.)