

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3444 OF 2016
WITH
CIVIL APPLICATION NO.3765 OF 2016
IN
FIRST APPEAL NO.698 OF 2014.

Mrs. Preeti Mohan @ Bitty Dogra
@ Preeti harish Mansukhani

.... Applicant.

V/s.

Dr. Ranbir Singh and ors

.... Respondents

Mr. Akshay Patil a/w Mr. Nausher Kohli, I/by DSK Legal, for the Applicant.
Ms. R.C. Nichani, for respondent Nos. 1 to 3.
Mr. M.R. Mandawgade, Special Duty Officer, Court Receiver, High Court,
Bombay.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 7TH SEPTEMBER, 2016.

P.C. :

1. This application is preferred by the constituted attorney of applicant, Ms. Preeti Mohan @ Bitty Dogra, seeking extension of further four weeks in order to enable applicant to execute fresh agency agreement with the Court Receiver. Second prayer is also made to the effect that the delay of 192 days, caused in seeking the execution of fresh agency agreement, in accordance with the order of this Court, be condoned.

2. It is submitted that as per order passed dated 15th September,

2015, passed by Division Bench of this Court, the applicant was directed to execute fresh agency agreement with the office of Court Receiver and also to file fresh undertaking in terms of the order dated 12th December, 1995, within a period of four weeks from the date of the order.

3. It is submitted that in pursuance of the said order, applicant has approached the office of Court Receiver, by letter dated 11th January, 2016 for execution of fresh agency agreement. The Court Receiver, vide its letter dated 16th January, 2016, informed the advocate for the applicant that meeting for the execution of fresh agency agreement was scheduled on 9th February, 2016 at 1.30 p.m. However, on that day, advocate for the applicant was unable to reach the office premises of the Court Receiver at scheduled time. Therefore, the Court Receiver vide its letter dated 11th February, 2016, rescheduled next meeting on 29th February, 2016.

4. Learned counsel for applicant submits that during the said period, applicant was Non-resident Indian and was at Toronto, Canada, she has requested the Court Receiver for suitable date of 18th April, 2016, which was inadvertently mentioned as 18th March, 2016. On 29th February, 2016, as advocate of the applicant alone attended the office of Court Receiver, meeting was rescheduled to 1st week of March, 2016. On that day also, advocate for applicant attended the office of Court Receiver and requested to grant time after 5th March, 2016. However, by that time as period of four weeks, granted by this Court, has lapsed, office of Court

Receiver directed the applicant to approach this Court for extension of said period.

5. Accordingly, applicant filed Civil Application No.1536 of 2016, on 13th April, 2016, for extension of two weeks time, in order to enable her to execute fresh agency agreement. The said application was listed before this Court on 29th June, 2016, when the applicant was permitted to withdraw the said application, on instructions of the Power of Attorney of applicant, with liberty to file appropriate application, giving all the details. After withdrawal of the said application, present application is filed, seeking extension of four weeks time for execution of the fresh agency agreement with the Court Receiver by condoning delay of 192 days occurred in filing the said application. Alongwith the application, applicant has produced on record various correspondence exchanged by applicant with the office of Court Receiver, the copy of the order passed by this Court on 29th June, 2016, the certificate issued by the Society that the applicant and her Power of Attorney her husband are residing in the said flat etc.

6. This application is resisted by the respondents herein by submitting that the application is misconceived. The contents of this application and that of the earlier application which was withdrawn by the applicant, are one and the same. Further it is submitted that, already period of four weeks, as granted by this Court for execution of agency

agreement and for giving fresh undertaking, has expired long back. The applicant has consistently remained absent in the meetings before the Court Receiver. It is also contended that no undertaking, as directed by this Court, is furnished even till today. It is submitted that the earlier application was withdrawn on the ground that fresh undertaking is not given, even now also the said undertaking is not furnished. It is submitted that neither applicant nor her Power of Attorney, are residing in the suit flat. False certificate to that effect is produced on record. As per own case of applicant, as stated in this application, she is Non Resident Indian and presently residing in Canada. Thus, it is urged that absolutely no sufficient cause is made out by the applicant for condonation of delay of 192 days in execution of fresh agreement and this application is nothing but one more attempt to protract complying with the order of this Court. Hence the application deserves to be dismissed.

7. Learned counsel for respondent has also drawn attention of this Court to Civil Application No.3765 of 2016 by which respondent herein has requested this Court to permit respondent to execute necessary agreement of agency with the Court Receiver on the count that the applicant, herein has not complied with the orders of this Court and also not residing in India and therefore, respondents be permitted to occupy the suit flat.

8. I have heard learned counsel for both parties. It is true that

admittedly there is delay of 192 days in complying with the order passed by this Court on 15th December, 2015. However, the correspondence, which is produced on record reveals that applicant was not totally negligent, nor the delay in executing the agreement is intentional or deliberate, since immediately after the order was passed by this Court, request was made to Court Receiver to fix meeting. As stated above on account of some difficulties, applicant could not remain present in the office of Court Receiver for execution of agreement and as a result thereof, the period of four weeks expired. Hence applicant, as per directions of Court Receiver had taken immediate step of filing application in the Court to seek extension of time. That application was withdrawn on the ground that the Power of Attorney holder of applicant, who filed said application, was not authorized in the said power of attorney to furnish fresh undertaking. Now copy of new Power of Attorney is produced on record to show that he has been authorised to do so. Accordingly submission is made that the fresh undertaking will be provided and afresh agency agreement will be executed in the office of Court Receiver, as expeditiously as possible, within certain time, as may be prescribed by this Court, without fail.

9. In my considered view, for the reasons stated in the application, period of three weeks from today for execution of the fresh agency agreement and for furnishing fresh undertaking in terms of order

dated 12th December, 1995 needs to be granted in stipulation. Considering the delay caused in the matter, learned counsel for applicant himself, submits that the applicant is ready to pay costs as this Court may deem fit. Hence the order.

Order

- I) Civil Application No.3444 of 2016 is allowed.
- ii) Extension of three weeks is granted to execute fresh agency agreement, subject to costs of Rs.10,000/- to be paid by the applicant to the respondent within one week from today.
- lii) On failure to pay costs within the stipulated period and to execute necessary undertaking and fresh agency agreement, this application will stand dismissed automatically, without further reference to this Court.
- iv) List Civil Application No.3765 of 2016 on 04.10.2016 for compliance of order.

[DR. SHALINI PHANSALKAR-JOSHI, J.]