

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**Writ Petition NO. 9457 OF 2016**

Smt. Shabira Khatoon W/o. Haroon A. Haqim  
(deceased) Through LRs. ...Petitioners

*Versus*

Smt. Kaiful Abdul Rauf ...Respondent

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Mr.Awadhesh R. Pandey, Advocate for the Petitioners.

Mr. Akhilesh Dubey a/w. Rahul Sharma, Paritosh Shukla i/b.  
M/s. Law Counsellor, for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 13<sup>th</sup> OCTOBER, 2016

P.C.

1. Heard Mr.Awadhesh Pandey, learned Counsel for the petitioners and Mr.Akhilesh Dubey, learned Counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 1.7.2016 passed by the Appellate Bench of the Small Causes Court at Bombay in Marji Application No.538/2015. By that order, the Appellate Court dismissed the application filed by the

petitioners/appellants in Appeal No.424/2009 for condoning delay of 250 days in filing application for reviewing the order dated 18.10.2014. By order dated 18.10.2014, appeal preferred by the petitioners was dismissed for want of prosecution.

3. The respondent, hereinafter referred to as the 'plaintiff' had instituted R.A.E. Suit No.403/700 of 2002 against the petitioners for recovery of possession of the suit premises. The suit was decreed on 10.6.2009. Aggrieved by that decision, the petitioners preferred Appeal No.424/2009. It appears that pending appeal, the petitioners took out application for stay of the eviction decree. Appellate Court stayed the eviction decree by order dated 17.11.2011 subject to the petitioners depositing Rs.5000/- per month. The petitioners challenged that order by filing proceedings in this Court. By order dated 3.4.2012, the amount of compensation was reduced from Rs.5,000/- per month to Rs.4,200/- per month. From the record it is evident that the petitioners deposited the amount of compensation upto May, 2012 and, thereafter did not deposit any amount.

4. As the petitioners did not comply with the condition of stay, the stay stood vacated. Ultimately on 18.10.2014, Appellate Court also dismissed the Appeal. The decree was thereafter executed on 29.6.2015. It appears

that by order dated 8.10.2015, the Executing Court directed the Bailiff to remove the articles belonging to the petitioner (tenant) in the suit premises, bring the same to the Court and to place the same in safe custody of the Registrar of the Court until further orders. That order was challenged by instituting Writ Petition No.10270/2015 in this Court. In the order, this Court noted that the petitioners deposited amount of reasonable compensation upto May, 2012 and thereafter did not bother to make any further deposit. It was also noted that ultimately on 18.10.2014, the Appeal itself was dismissed. On 29.6.2015, the eviction decree was executed by the respondent herein. The petitioners applied for restoration of the appeal on 27.7.2015. In paragraph-7 this Court directed the Appellate Court to decide the application for restoration as expeditiously as possible and in any case within a period of six months. The Appellate Court was directed to ensure that the petitioners deposit before the Appellate Court, reasonable compensation as determined by this Court @ Rs.4,200/- per month from June, 2012 to 29.6.2015 as per order dated 19.10.2015 passed by this Court in Writ Petition No.10270/2015. It is not in dispute that the petitioners did not comply said order.

5. By the impugned order, Appellate Court rejected the Marji application on the ground that no sufficient

cause is made out. Mr. Pandey strenuously contended that the petitioners are ready and willing to comply the order dated 19.10.2015 passed by this Court. He submitted that the impugned order may be set aside thereby giving opportunity to the petitioners to prosecute the appeal on its own merits. By not condoning the delay, it has resulted in dismissal of the substantive appeal preferred by the petitioners. He has taken me through Marji Application filed by the petitioners for condoning the delay.

6. On the other hand Mr.Dubey supported the impugned order. He submitted that no case is made out for condoning the delay. The petitioners have consistently flouted the orders passed by Appellate Court as also by this Court. In fact as per the order passed by this Court on 19.10.2015 in Writ Petition No.10270/2015, the petitioners on their own should have deposited the amount of arrears. As the petitioners failed to deposit the arrears, it was the plaintiff who was required to take out application Exhibit-11 for issuing appropriate directions to the petitioners. Though that application was allowed, till date the petitioners have not deposited the amount as per the order passed by this Court. He has also taken me through the application for condonation of delay and submitted that no case is made out for condoning the delay.

7. I have considered the rival submissions advanced

by learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the suit instituted by the plaintiff was decreed on 10.6.2009. The petitioners preferred appeal against said judgment and decree. Pending appeal they took out application for stay. Initially by order dated 17.11.2011 appellate Court stayed the eviction decree subject to the condition of the petitioners depositing amount @ Rs.5000/- per month. Said order was challenged by the petitioners by filing proceedings in this Court. By order dated 3.4.2012, the compensation was reduced from Rs.5000/- to Rs.4200/- per month. It is not disputed by the petitioners and which is also evident from record that the petitioners did not deposit the amount from June, 2012 onwards. With the result, the stay which was conditional stood vacated. It also appears that on 29.9.2014, Appellate Court noted that the appellants (petitioners herein) and the learned Counsel was absent when called repeatedly. It was brought to the notice of Appellate Court by the respondent/plaintiff that the petitioners have not deposited the amount in the Court. The matter was, therefore, adjourned for passing dismissal order.

8. The matter was thereafter listed for dismissal on 18.10.2014. Even on that date the petitioners and their Advocate did not appear despite the matter being repeatedly

called out. In view of order dated 29.9.2014, Appellate Court dismissed the appeal for want of prosecution. The petitioners thereafter took out application for restoration on 27.7.2015 and as there was delay in filing application for restoration, the petitioners took out application for condonation of delay of 250 days. It further appears that on 8.10.2015 the Executing Court directed the Bailiff to remove the articles belonging to the petitioners as the decree was already executed on 29.6.2015. Said order was challenged by the petitioners by filing Writ Petition No.10270/2015. This Court disposed of Writ Petition by giving liberty to the petitioners to remove the articles within 15 days failing which the plaintiff will be at liberty to apply to the Executing Court for disposal of movable articles in accordance with law. This Court also directed the Appellate Court to decide the application for restoration as expeditiously as possible and in any case within period of six months. The Appellate Court was directed to ensure that the petitioners deposit compensation @ Rs.4200/- per month from June, 2012 till 29.6.2015. It is not disputed and is rather evident from record that the petitioners did not deposit the amount. In fact the plaintiff filed application Exhibit-11 for directing the petitioners to deposit arrears of compensation amount to Rs.1,55,400/-. Application was allowed by the Appellate Court on 21.4.2016. Even thereafter the petitioners did not comply

the order passed by the Appellate Court.

9. With the assistance of learned Counsel for the parties, I have perused the application for restoration as also application for condonation of delay. Perusal of the cause title shows that petitioner No.1 and petitioner No.2 carry on business. No explanation is given by the petitioners No.1 & 2 for not filing application for restoration. Only ground given is found from paragraph-7 onwards. After perusing the averments made in paragraph-7 onwards in the application for condonation of delay, I am satisfied that no sufficient cause is made out by the petitioners for condoning the delay of 250 days. While rejecting the application, Appellate Court has referred to the decisions of Apex Court in ***N. Balakrishnan v. M. Krishnamurthy, AIR 1998 S.C. 3222, State of Nagaland v. Lipok Ao, (2005) 3 S.C.C. 752*** as also ***Basawraj & Anr. v. The Special Land Acquisition Officer, (2013) 14 S.C.C. 811***. After considering these decisions, in paragraph-14 Appellate Court recorded that there is no proof of adequate and enough reason which prevented the petitioners to approach the Court within limitation. Appellate Court categorically recorded a finding that the petitioners were negligent and have not acted diligently.

10. For the reasons recorded earlier, I am satisfied that

this is the self-creation of the petitioners and they cannot blame anybody else. The reasons set out by the petitioners in the application for condonation of delay do not constitute reasonable cause. The petitioners will have to blame themselves for their own creations. No case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)