

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1987 OF 2016
IN
WRIT PETITION NO. 21 OF 2010

Mrs.Dilmaher P. Guzder.	...	Applicant.
V/s.		
Syedna Qutbuddin Memorial Education Society and others.	...	Respondents.

Yatin R. Shah with Aditi Bhatt for the applicant.

Soniya Putta with Kinjal Shah i/b. M/s,Solomon & Co.
for respondent Nos.2, 2A, 3 and 3A.

CORAM : D.H.WAGHELA, C.J.

DATE : 29th July 2016.

PC. :

The application is filed with the prayer to set aside the order of dismissal of Writ Petition No.21/2010 dated 26th August 2011 of learned Registrar (Judicial-I) as also to set aside the order of dismissal of Civil Application (St.) No.12579/2011 which was dismissed on 22nd June 2015 after taking note of the fact that the main writ petition was already dismissed as aforesaid. The later

civil application dismissed on 22nd June 2015 is stated to be an application for amendment of Writ Petition No.21/2010.

2. It may be pertinent to note as a relevant backdrop that the main Writ Petition No.21/2010 was entertained on 29th September 2010 when the order as under was made:

“CORAM : A.S.OKA, J.
DATE : 29th September 2010.

PC.:

. Heard learned counsel appearing for the parties. Arguable questions are raised. Rule.

2. It is not in dispute that Sale Deed has been already executed on 4th December 2009 in terms of the impugned order and the purchasers are placed in possession of the property. It is stated that the purchasers are running a school in the property. The prayer for interim stay in terms of prayer clause (b) is rejected. Hearing of the writ petition is expedited.”

3. Apparently, the petitioner, the applicant herein has not pursued the petition after the above order for any purpose except for filing the civil application for amendment in 2011, which also is not pursued till it was dismissed on 22nd June 2015. Against such backdrop of facts, it is stated in the application that all the respondents were served in the main petition and the respondents

were duly represented by different advocates. Therefore, the applicant waited for further hearing of the civil application and for taking such steps as required. When the civil application was on board before learned Registrar (Judicial-I) on 22nd June 2015, it was pointed out that the main writ petition was already dismissed on 26th August 2011. It is categorically stated in the application that the applicant was never aware of any order dated 26th August 2011 as the service being completed on all the respondents and the matter was ripe for hearing in view of the order for expeditious hearing. It was also repeatedly orally submitted by learned counsel for the applicant that the copies of the petition were served upon the respondents and hence no Bhatta charges were required to be paid by the petitioner, even as the date and details of service of copies on the respondents are not placed on record and, admittedly, not available with learned counsel. It could not be gainsaid that the petition was admitted and rule was issued on 29th September 2010, whereafter the notice of rule along with copies of the petition was required to be served upon the respondents unless such service was expressly waived on behalf of the respondents. Admittedly, such was not the fact and the main petition was listed for orders on 26th August 2011 before the Registrar (Judicial-I), but no one remained present before learned Registrar (Judicial-I). In spite of such absence and non-prosecution, time of four weeks was granted to pay Bhatta charges and the conditional order was made for dismissal of

the petition, if the Bhatta charges were not paid within the stipulated period of four weeks from 26th August 2011. That order was expressly and admittedly made in the petition of the applicant and the applicant as well as her advocate were supposed and can be presumed to be aware of the proceedings before the Registrar (Judicial-I) and the order made by him. However, the applicant does not seem to have made even any enquiry about the status of the petition which was ordered to be expeditiously heard. Not only that but the civil application filed in the year 2011 in the main petition also does not appear to have been pursued for nearly 5 years for any order. Therefore, it appears to be a clear case of indolence and negligence on the part of the applicant and, consequentially, the present application can be treated as as an application filed for restoration of the original petition after prolonged delay of nearly 5 years without any explanation or justification. Learned counsel for the applicant has not relied upon any rule or legal provision to substantiate his sole argument that if the copies of the petition were already served on the respondents before admission hearing of the writ petition and learned advocate for the respondents had already appeared at the time of admission hearing, there was no necessity of paying Bhatta charges after the Court issued rule.

4. Thus, in absence of any legal support and with the factual background narrated above, no ground is made out to

condone the delay in making the present application or to restore the original proceedings of the main writ petition or the civil application filed therein. The application is, therefore, dismissed with no order as to costs.

CHIEF JUSTICE