

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1002 OF 2016**

1. Mr. Rakesh Kumar Ramay
Sharma and ors.

Petitioners

Vs

1. Abdul Kader Abdul Karim and
Ors.

.. Respondents

Mr. Awadhesh R Pandey, Advocate for Petitioners.

Mr.Satyan N Vaishnav a/w Ms Nupur J Mukherjee i/b M/s
N.N.Vaishnawa & Co., Advocates for Respondents no. 1 to 4.

CORAM : R.G.KETKAR,J.

DATE : 25/01/2016

PC:

1. Heard Mr. Awadhesh Pandey, learned counsel for the petitioners and Mr. Satyan Vaishnav, learned counsel for respondents no. 1 to 4 at length. Mr. Pandey seeks leave to delete respondents no. 5(a) to 5(c) and 6(a) to 6(e) on the ground that respondents no.1 to 4 are the only contesting respondents, being decree holders, is granted. Amendment shall be carried out forthwith.

2. Rule. Mr. Vaishnav waives service for respondents no.1 to 4. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'obstructionists no.1 to 3', have challenged the Judgment and order dated 19.8.2015 passed by the Appellate Bench of Small Causes Court,

Mumbai, below Exhibit-1 in MARJI Application No.521 of 2014. By that order, the Appellate Bench rejected the application made by obstructionists no.1 to 3 for condoning delay of 74 days in filing Appeal.

4. Mr. Pandey submitted that the obstructionists' notice taken out by respondents no. 1 to 4, hereinafter referred to as 'decree holders" was made absolute by the trial Court on 8.5.2014. Obstructionists no.1 to 3 are directed to deliver possession of the suit premises to them within a period of 60 days and on their failure, decree passed in R.A.E.Suit No.966 of 1991 be executed by removing obstructionists no. 1 to 3 from the suit premises and to deliver its vacant possession to the decree holders. Aggrieved by that decision, obstructionists preferred Appeal (L) No.3920 of 2014. Since there was delay of 74 days in filing the Appeal, the application for condonation of delay was made. The same is rejected by the impugned order. The valuable right of substantive appeal of obstructionist no. 1 to 3 is lost. He further states that obstructionists no.1 to 3 are in possession and nobody else is in possession and they have so far not created third party interest. They will hereafter neither create third party interest nor part with possession and will abide by decision of the Appellate Bench in case the delay is condoned and Appeal is decided against them. He assures that within two weeks from today, obstructionists no.1 to 3 will file undertaking in the aforesaid

terms in the Appellate Court after giving advance copy to decree holders.

5. On the other hand, Mr. Vaishnava supported the impugned order. He submitted that decree of eviction passed in favour of decree holders is confirmed right upto the Apex Court. When decree holders went to execute the decree, obstruction is raised by the petitioners and, therefore, they were compelled to take out obstruction notice. He further submitted that no reason is assigned for condoning the delay. The only ground for condoning the delay is that during vacation, the obstructionist went to their native place and came back in the third week of June, 2014. The Appellate Bench has considered this in paragraph 12 and came to the conclusion that no sufficient cause is made out for condoning the delay. He submitted that if Court is inclined to condone the delay, the Appellate Bench may be directed to dispose of the appeal in a time bound manner. Mr. Pandey has no objection in case direction is given to that effect.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the eviction suit instituted by decree holders is decreed by the trial Court in the year 2004. Decree was confirmed by the Appellate Court in 2012. Civil Revision Application instituted against these decisions was dismissed by this Court on 19.4.2012 and the said order was

confirmed by the Apex Court on 14.9 2012. When decree holders went for execution, obstruction was caused. Obstructionists' notice taken out by them was made absolute on 8.5.2014. Against that decision, obstructionist no. 1 to 3 preferred appeal and since there was delay of 74 days in filing appeal, they took out application for condonation of delay in filing the appeal.

7. It is settled principles of law that while considering the application for delay, the Court has to adopt liberal approach. Apart from that, what counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The expression 'sufficient cause' should be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay, as held by the Apex Court in the case of **State of Nagaland Vs. Lipok AO, 2005 (3) Supreme Court Cases 752.**

8. In the light of the aforesaid decision as also having regard to the fact that delay is of 74 days, in my opinion, the Appellate Bench should have condoned the delay and proceeded to hear appeal on merits instead of dismissing it on technical ground. By not condoning the delay, substantive right of obstructionists no. 1 to 3 of Appeal is lost. At the same time, it is also necessary to direct the Appellate Bench to dispose of appeal in a time bound

manner. Mr. Pandey states that ad-interim order in terms of prayer clause (b) may be granted for a period of two weeks so as to enable obstructionists no. 1 to 3 to take out application for interim order, if not already taken. In view thereof, subject to obstructionists no.1 to 3 neither creating third party interest nor parting with possession, there shall be ad-interim order in terms of prayer clause (b) for a period of two weeks from today. It is expressly made clear that grant of ad-interim order is not an expression of merits either way. Ad-interim order shall stand dissolves after expiry of the two weeks. In the meantime, obstructionist no. 1 to 3 shall take out appropriate application and the same shall be decided on its own merits and in accordance with law. All contentions in that regard are expressly kept open. Order accordingly. Hence, the following order.

- (i) Impugned order dated 19.8.2015 is quashed and set aside and the application for condonation of delay of 74 days stands allowed.
- (ii) Obstructionists no.1 to 3 shall file affidavit in the form of undertaking as set out earlier, within two weeks from today and serve copy in advance on decree holders.
- (ii) Appellate Bench is requested to decide Appeal as expeditiously as possible and in any case within three months from production of the authenticated copy of this order.

(iii) It is made clear that I have not examined merits of Appeal. Obstructionist no. 1 to 3 shall remove office objections in Appeal so filed and also file private paper book containing all relevant documents, evidence and serve copy in advance on the other side within two weeks from today.

(iv) Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)