

Sequeira

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

WRIT PETITION (Stamp) NO. 33887 OF 2016

Smt.Zubaida Abidali Hirani & anr.

.. Petitioners

Vs

Mr.Shabbir Abbas Shaikh & anr.

.. Respondents

Ms.Nidhi Revankar i/b A.G.Revankar & Co., for Petitioners.

Mr.S.S.Redekar, for Respondent No.1.

***CORAM : N.M.Jamdar, J.
Wednesday, 21 December 2016.***

Oral Order :

Heard learned counsel for the parties. In view of the narrow controversy involved, taken up for final disposal.

2. The Petitioners have challenged the order dated 6 October 2016 passed by the learned District Judge Vasai, rejecting the application for permission to deposit costs, with an application for condonation of delay. In normal circumstances, such orders of extension of time to deposit costs would be generally granted but the facts of the case show that this is not one such case where straightaway indulgence can be granted to Petitioners disregarding the prejudice that is caused to Respondents.

3. The Respondent-landlord filed a Suit bearing No.274 of 2000 for seeking possession of the suit premises from Defendant No.1 and Defendant No.2. On 23 November 2000. The suit was filed on the ground of subletting ,that the defendants are residing at Ambadi Road, Vasai and the Defendants are defaulters in payment of rent. Written statement was filed by both Defendants. In the suit Defendants were represented through an Advocate. The suit was decreed by learned Civil Judge, Vasai on 25 July 2008. Thereafter an appeal was filed by the Defendant Nos.1 and 2 with an application for condonation of delay. This application was signed by Defendant No.2. In the application it was stated that Defendant No.1 is suffering from terminal illness and therefore, there was a delay. This application was opposed and the learned District Judge condoned the delay of eleven months subject to deposit of ₹ 1100 by order dated 25 October 2010. In spite of this indulgence the Petitioners did not deposit the amount and move an application for extension of time in the year 2016 which has been rejected by the impugned order.

4. The learned counsel for Petitioners submitted that the Defendant No.1 was suffering from illness and he subsequently expired and Defendant No.2 was not taking interest and thereafter amount could not be paid in time. The learned counsel for the Respondent-landlord strenuously opposed and submitted that every time execution proceedings are moved, the Petitioners-Defendants have moved the Court. He stated that the allegation that the

Defendant No.2 was not taking interest is correct as he has signed the application along with the Petitioners as well as he has signed the application for condonation of delay.

5. It is to be noted that these signatures are in English and will have to be presumed that Defendants were aware of the implication of the delay. The grievance made by the Respondent-landlord that which delay is caused by Petitioners cannot be stated to be unjustified. Limitless indulgence cannot be granted to a party who does not keep track of the litigation. The rights accrued to the landlord under a decree cannot be set aside merely on the asking of the Defendant. Mr.Redekar, learned counsel for the Respondent No.1 also pointed out that before the trial Court, the case of the Respondent was that the Petitioners are residing at Ambadi Road and reply to the notice is given from the said address. That means that the petitioners are residing at that address. In the circumstances I was not inclined to interfere with the impugned order, however ,to balance equities it was put to the learned counsel for Petitioners that if the receiver is appointed on the suit property and the Respondent-landlord is appointed as an agent of the receiver to occupy the premises till disposal of the appeal, which would be restored, the learned counsel for Petitioners submitted that the course of action may be adopted.

6. In the circumstances, I am of the opinion that considering the

totality of the circumstances, following order will meet the interest of justice.

i. The Petitioners will deposit the costs as directed by the learned District Judge Vasai, within period of four weeks from today.

ii. The impugned order dated 6 October 2016 is quashed and set aside. The Civil Miscellaneous Application No.18 of 2015 filed by Petitioners stands restored to file.

iii. The learned District Judge Vasai, will appoint a suitable officer of the Court, as a Receiver and appoint the Respondent-landlord as agent of the Receiver and put him in possession of the suit premises. This arrangement shall be subject to the outcome of the appeal.

iv. The learned District Judge will make an endeavour to dispose of the appeal as early as possible within period of six months from the date the writ of this court reaches it.

7. Writ Petition is disposed of in above terms.

(N.M.Jamdar, J.)