

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5440 OF 2015

Kallan Gaffur Pinjari Vs. Digambar Dattatraya Gosai & Ors.

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Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri Rohit Joshi Adv for petitioner.
Shri S. V. Sohoni Adv for respondents.

CORAM: A. S. CHANDURKAR J.

DATED: 29th JUNE, 2016.

The challenge in the present writ petition is to the order passed by the appellate Court thereby rejecting the application for condoning the delay in filing an appeal under Section 34 of the Maharashtra Rent Control Act, 1999 (for short, the said Act).

The respondents are the original plaintiffs and owners of the suit premises that are in occupation of the petitioner as a tenant. The respondents filed a suit for eviction of the petitioner under the provisions of Section 16(1) (g) of the said Act. The trial Court by judgment dated 06.03.2014 decreed the said suit and directed eviction of the petitioner. The petitioner on 24.03.2015 filed an appeal under Section 34 of the said Act along with an application for condonation of delay. This application has been rejected by the appellate Court and hence the present writ petition.

Shri Rohit Joshi, the learned counsel for the petitioner submitted

that considering the explanation furnished by the petitioner in his application for condonation of delay coupled with the fact that the petitioner was aged about 80 years the appellate Court ought to have condoned the delay. He submitted that the reasons for cause of delay were mentioned in paragraphs 2 and 3 of the application. It was stated that initially there was lack of communication between the petitioner and his counsel and that due to old age and financial problems the delay was caused. He submitted that the appellate Court by refusing to condone the delay failed to exercise proper discretion and the effect was that the petitioner would suffer eviction in view of the decree passed by the trial Court. He then submitted that the decree as passed by the trial Court causes serious prejudice to the legal rights of the petitioner and the said decree has been passed in a manner contrary to law. According to him, the decree for eviction would serve no purpose in as much as unless the other tenants in occupation of the adjoining portion of the tenanted premises are vacated it would not be possible for the respondents to use their own premises in a better way. He, therefore, submitted that as failure to condone the delay would result in perpetuating the illegality, the appeal deserves to be condoned. In support of his submission the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in *Union of India Vs. Giani* 2011 (11) SCC 480; *Krishna Murari Prasad Vs. Miktar Singh* AIR 1994 Supreme Court 489 and *Ashok Balaji Ratan Vs. Nagpur Improvement Trust, Nagpur* 2004(3) *Maharashtra Law Journal* 659.

Shri S. V. Sohoni, the learned counsel for the respondents supported the impugned order. He submitted that the appellate Court after considering the evidence that was led by the petitioner refused to condone the

delay. It was submitted that in the cross examination the petitioner admitted that his son was looking after the litigation and that the affidavit in support of the prayer for condonation of delay was prepared at the instance of the petitioner's son. He submitted that the decree passed by the trial Court was legal and proper and the same did not result in any illegality.

I have heard the respective counsel and I have given due consideration to their submissions. The eviction of the petitioner was sought on the ground that after partition of the entire property, the vacant possession was required for the purposes of entering the landlord's house. As stated above the decree came to be passed on 06.03.2014. In the application for condonation of delay it has been stated that initially an application for appointment of Commissioner was made before the trial Court but the same was rejected. Though this order was sought to be challenged the same was not so challenged. It is then stated that there was lack of communication between the petitioner and his counsel. After receiving the notice in the execution proceedings the appeal came to be filed after obtaining the certified copies. The petitioner examined himself in support of his prayer. He stated that he was aged about 80 years and that he was having heart ailment and blood pressure since the age of 55 . He admitted that his son was looking after the case when the suit was pending in the trial Court and his son had knowledge about the orders therein. He admitted that his sons were helping himself financially in the litigation. The contents of Ex. 19 which was an affidavit was prepared at the instance of his son. After considering this evidence as well as the medical certificate, the appellate Court found that there was no sufficient cause made out to condone the delay. Considering the reasons mentioned in

the application and the deposition of the petitioner I do not find that the appellate Court committed any error in refusing to condone the delay of 11 months and 17 days.

In so far as the submission is made that if the delay is not condoned the same would result in illegality, the said submission cannot be accepted. It is not a case that the trial Court did not have any jurisdiction to entertain the suit and pass a decree. The apprehension that unless other tenants are got vacated, the respondents would not be able to enter their house through the tenanted portion is a matter to be taken into consideration by the respondents. In any event it is stated that proceedings have been filed against the other tenants also. In that background therefore the ratio of aforesaid decisions relied upon by the learned counsel for the petitioner cannot be made applicable to the facts of the present case. In view of aforesaid I do not find any case to interfere in writ jurisdiction. However, the petitioner is granted time to vacate the premises by the end of October 2016. The writ petition stands dismissed with no order as to costs.

JUDGE

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