

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

C.A.C. NO.3/2016
IN
CIVIL REVISION APPLICATION STAMP NO.23906/2015

Mahadeo Narayan Kale and another

..Vs..

Shri Laxmi Vyankatesh Deosthan Trust, Nagpur and others

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

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : 29.8.2016.

Heard Shri S.D. Chopde, Advocate for the applicants/original defendants and Dr. (Mrs.) R.S. Sirpurkar, Advocate for the non-applicants/original plaintiffs.

The plaintiffs filed civil suit praying for decree for possession of the suit land and for other reliefs. The defendants are opposing the claim of the plaintiffs. The trial proceeded and the evidence on behalf of the plaintiffs is recorded. At this stage, the defendants had filed application (Exh. No.20) praying that the suit be dismissed as the plaintiff No.1 - Trust is not registered under the provisions of the Maharashtra Public Trusts Act, 1950. This application was rejected by the learned trial Judge by the order dated 1st October, 2012. The defendants filed another application (Exh. No.57) under Order 7 Rule 11 of the Code of Civil Procedure contending that there is no cause of action in favour of the plaintiffs and praying that the plaint be rejected. This application was rejected by the order dated 9th April, 2014. The defendants had filed Civil Revision Application No.110/2014 before this Court challenging the order passed

on application (Exh. No.57) on 9th April, 2014. At the time of hearing on this Civil Revision Application No.110/2014, the plaintiffs pointed out that the defendants had not challenged the order passed by the trial Court on application (Exh. No.20) and, therefore, the civil revision application was required to be dismissed. In view of the objection raised on behalf of the plaintiffs, the defendants sought permission to withdraw the revision application with liberty to file separate proceedings to challenge the order dated 1st October, 2012. Accordingly, the Civil Revision Application No.110/2014 was dismissed as withdrawn with liberty as prayed for by the defendants.

The defendants have now filed the present civil revision application. There is delay of about 1066 days in filing the civil revision application to challenge the order passed by the trial Court on the application (Exh. No.20) and, therefore, the civil application is filed praying for condonation of delay. The application praying for condonation of delay is opposed by the plaintiffs. The learned Advocate for the plaintiffs has submitted that the defendants have failed to show sufficient cause for not filing the civil revision application earlier. It is further submitted that the defendants are filing applications only to delay the disposal of civil suit.

In the application praying for condonation of delay, there is no explanation for not filing the revision application to challenge the order passed on application (Exh. No.20) within limitation. The defendants have not explained why the order passed on the application (Exh. No.20) was not challenged in Civil Revision Application No.110/2014. As the defendants have failed to show sufficient cause, the inordinate delay of 1066 days in filing the civil revision

application cannot be condoned.

In paragraph No.6 of the order passed by the learned trial Judge on 9th April, 2014, it is recorded that the defendants have filed numerous adjournment applications, an application praying for appointment of Commissioner and the application under Order 7 Rule 11 of the Code of Civil Procedure after the case is fixed for recording evidence of the defendants. It is recorded that the case is fixed for recording of the evidence of the defendants since 21st June, 2013.

In the above facts, the civil application praying for condonation of delay in filing the civil revision application is **dismissed**. Consequently, the civil revision application is **dismissed**. The defendants shall pay Rs.10,000/- (Rs. Ten Thousand Only) towards costs to the plaintiffs within one month.

If the amount of costs is not paid within time and receipt is not produced on record of the trial Court within one month, the learned trial Judge shall pass appropriate orders considering it to be non-compliance of the order passed by this Court.

JUDGE

CERTIFICATE

“ I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order”.

Uploaded By : N.V. Tambaskar.
Personal Assistant.

Uploaded On : 16.9.2016.