

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.898 OF 2013

Nivrutti Runjaji Hivrale,
Age 55 yers, Occup. Business,
R/o Building No.2, Tulsi Apartment,
Eknath Nagar, Aurangabad. ...Petitioner

Versus

- 1) Sumitra Sureshchandra Joshi,
Age: 65 years, Occup. Retired Teacher,
R/o Abhiman, Shree Apartment,
Jyoti Nagar, Aurangabad.
- 2) Tulsi Flat Owners Co-operative Society,
through its Liquidator Mr. Rohidas
Dattatraya Avhad, C/o. M.S.H.F.
Corporation, Arth Complex, Near Tapadiya
Terrace, Adalat Road, Aurangabad. ...Respondents

Mr. S. S. Kazi, Advocate for petitioner
Mr. Jitendra Patil, Advocate holding for Mr. P. R. Katneshwarkar,
Advocate for respondent No.1
Mr. N. R. Bhavar, Advocate for respondent No.2.

CORAM : R. M. BORDE, J.
DATE : 17-11-2017

PER COURT :

1. Order of rejection of an application tendered by the petitioner seeking condonation of delay of about 03 years, 05 months

and 26 days occurred in preferring appeal challenging the decree passed by the 7th Jt. Civil Judge, Junior Division, Aurangabad dated 29-09-2007 in Rent Suit No.41 of 2005, is the subject matter of this petition.

2. The petitioner claimed to be tenant in respect of the property let out by the respondent landlord. A suit was presented by the respondent landlord bearing Rent Suit No.41 of 2005 claiming recovery of arrears of rent of Rs.19,600/-, and for recovery of possession of Flat No.12, Building No.2, Tulsi Apartment, Eknathnagar, Aurangabad.

3. It is contention of the respondent/original plaintiff that, the defendant had entered into the suit premises on the basis of oral agreement of tenancy since 02-05-2003. The monthly rent of the suit premises was settled at Rs.1400/- per month, and the amount of rent was payable monthly prior to 10th day of each month.

4. It is contended that, the petitioner who is original defendant, is in possession of the suit property in the capacity of the tenant. However the petitioner-original defendant did not pay the rent regularly since September, 2004. It is also claimed by the defendant

that, he intends to purchase the suit property, and therefore, instead of vacating suit property he would purchase the same. Though efforts were made by the petitioner for purchase of the property, since the respondent-original plaintiff did not honour his words, the transaction did not materialise.

5. Although the defendant appeared in the suit on 26-02-2006, however, failed to file written statement and as such suit proceeded ex-parte. The decree was passed by the trial Court directing the recovery of rent and eviction of tenant on 29-09-2007. It does appear that, for about 03 years and 05 months, the defendant did not take steps, however presented the appeal belatedly.

6. It is the contention of the defendant that, the application was tendered by him seeking condonation of delay after he got knowledge about impugned Judgment. He obtained certified copy of impugned Judgment and Decree upon information from Court bailiff, who came for attachment of the suit property. The contention has not been substantiated by the defendant. Though the defendant appeared in the suit, he failed to file written statement and contest the suit. The appellate Court has not condoned the delay of 3 years, 5 months and 26 days caused in preferring appeal before lower appellate Court.

7. During the pendency of the instant petition, on being pointed to the Court that, the petitioner herein original defendant is default in payment of rent and the arrears are to the extent of Rs.1,17,000/-, directed the petitioner to deposit sum of Rs.1,25,000/- by 11th June, 2013 and the matter was directed to be placed on 12th June, 2013. The order passed by the learned Single Judge of this Court on 25th April, 2013 in respect of the deposit of the amount has not been complied with by the petitioner. The petitioner is a tenant who is enjoying the possession of the property without paying rent to the landlord. Even the interim order passed by this Court directing him to deposit amount towards arrears of rent has not been complied with by the petitioner-tenant.

8. In view of these facts, petitioner is not entitled to claim any relief as delay has not been properly explained by the petitioner. The petitioner relies on the Judgment in the matter of *Devineni Padmaja Vs. Vundavalli Srinivasa Rao*, reported in [2013 (2) Mh.L.J.], 184, to contend that, delay occurred in presenting the appeal deserves to be condoned. On perusal of the order passed by the Hon'ble Supreme Court it appears that, there is no principle laid down therein. In the said case, the High Court directed condonation of delay on

deposit of 50 % of amount and the Hon'ble Supreme Court found it appropriate. Even considering the facts of the case cited supra, if at all the precedent is applied to the instant matter, it is a matter of record that the petitioner herein failed to comply with the directions issued by this Court to deposit amount of Rs.1,25,000/- by 11th of June, 2013, and as such he is not entitled to claim any relief.

9. For the reasons recorded above, the writ petition being devoid of substance, stands rejected.

[R. M. BORDE]
JUDGE

vjg/-.