

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 172 OF 2017
IN
CIVIL REVISION APPLICATION NO. 22 OF 2011

Mulji Vinjuda	..	Applicant
<u>In the matter between :</u>		
Mulji Vinjuda	..	Applicant
vs.		
Prabhakar S. Khandke & Ors.	..	Respondents

AND
CIVIL APPLICATION NO. 169 OF 2016
IN
CIVIL REVISION APPLICATION NO. 22 OF 2011

Gautam C. Khandke	..	Applicant
<u>In the matter between :</u>		
Mulji Vinjuda	..	Applicant
vs.		
Prabhakar S. Khandke & Ors.	..	Respondents

Mr. Kunal Bhanage for Applicant in CAC 172 of 2017.
Mr. Durgesh Kulkarni i/b. Mr. D. S. Sabnis for Applicant in CAC 169 of 2016.

CORAM : M. S. SONAK, J.
DATE: 28 AUGUST 2017

P.C :

1] Civil application no. 172 of 2017 seeks for condonation of delay in setting aside of abatement and leave to bring on record the legal representatives of deceased respondent no. 1.

2] Civil application no. 169 of 2016 seeks for vacation of interim

relief on the ground that the applicant has failed to bring on record legal representatives of deceased respondent no. 1 despite knowledge of his demise.

3] Heard learned counsel for the parties.

4] The delay in the present case, is no doubt, inordinate. However, it is submitted that the matter can proceed as against respondent no. 2 who is stated to be co-owner of the suit premises. Further, it is explained that the applicant is a sweeper in occupation of small room of about 100 sq. ft. or thereabouts. It is submitted that the implications of not bringing on record the legal representatives of deceased respondent no. 1 were not realized by the applicant and therefore not brought to the notice of his advocate. It is submitted that the matter has not been delayed by the applicant either deliberately or otherwise since, even otherwise the matter would have remained pending as against respondent no. 2.

5] Mr. Kulkarni, learned counsel for the respondents however submits that the applicant was very much aware of the demise of the respondent no.1 and the delay in this case is both inordinate and unexplained.

6] Upon taking into consideration, the rival contentions as well as cause shown, the delay is condoned, abatement is set aside and leave is granted to bring on record legal representatives of deceased respondent no. 1. However, as pointed out by Mr. Kulkarni, the applicant, has not been as diligent as he was required to be. Therefore, this is a case for imposition of substantial costs. Mr. Bhanage, learned counsel for the applicant however makes a statement that the applicant will have no objection if the respondents withdraw the reasonable compensation amount which the applicant is deemed to deposit during the pendency of the civil revision application. He states that such withdrawal may be made subject to the final orders in the civil revision application.

7] In view of the aforesaid statement, the applicant is directed to pay costs of Rs.5,000/- within a period of four weeks from today. Further, the respondent – landlord is granted liberty to withdraw the reasonable compensation amount, which the applicant has deposited till date without furnish of any security. The respondent landlord shall however file undertaking in this court that the withdrawal of such amount shall abide by final orders that may be made in this civil revision application. In any case, it is clarified that this withdrawal shall abide by the final orders that may be made in this appeal.

8] Both the civil applications are disposed of in the aforesaid terms.

9] Necessary amendment to be carried out within four weeks from today.

10] Mr. Kulkarni waives notice for the legal representatives of deceased respondent no. 1 who are now ordered to be brought on record.

(M. S. SONAK, J.)

Chandka