

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

**CIVIL APPLICATION NO. 192 OF 2017
IN
REVIEW PETITION (ST.) NO. 16051 OF 2017
IN
WRIT PETITION NO. 4327 OF 2015**

Pankaj Ramanlal Raval .. Applicant.
Vs.
Krishnakant S/o Bootara Bhalla & Ors. .. Respondents
...

Mr.Nitin Wadikar i/b Savina S. Bangera for Applicant.
None for Respondents.

...

CORAM : M.S. SONAK, J.

DATE : 24 AUGUST 2017.

P.C. :

Morning Session

1. This Civil Application as well as Review Petition is a gross abuse of the process of this court.

2. This Civil Application seeks condonation of delay 1082 days in instituting Review Petition against the order dated 28th July, 2015.

3. Learned counsel for the petitioner states that though the Civil Application states that delay is 1082 days, in fact the

delay is of hardly 700 days. This is after excluding the time spent by the petitioner before the Hon'ble Supreme Court and the Small Causes Court seeking to obtain some redressal against the order dated 28th July, 2015 made by this Court. Learned counsel for the petitioner submits that the time spent by the petitioner for this purpose was spent bonafide and therefore the same is required to be excluded.

4. In the alternate, learned counsel for the petitioner submits that even otherwise, from the date of the order dated 28th July, 2015, the delay is not 1082 days but only 700 days. He submits that since the petitioner was bonafide pursuing the matter before the Hon'ble Supreme Court and the Small Causes Court, there is sufficient cause for condonation of delay.

5. In this case, the petitioner, has suffered an eviction decree on 30th September, 2013 from the Small Causes Court, Mumbai. The petitioner instituted an appeal to the Appellate Bench which by order dated 29th January, 2015 stayed execution of the eviction decree subject to the petitioner depositing amount at the rate of Rs.250/- per sq. ft per month in the Appellate Court.

This direction was in terms of law laid down by the Hon'ble Supreme Court in the case of ***Atma Ram Properties (Private) Limited Vs. Federal Motors Private Limited¹*** and ***State of Maharashtra & anr. Vs. M/s Super Max International Pvt. Ltd. & Ors.²***

6. The petitioner by instituting writ petition No. 4327/2015, questioned the condition of deposit as imposed in the order dated 29th January, 2015. This petition was disposed of by judgment and order dated 28th July, 2015 by diluting the condition of deposit. The Appellate Bench had directed to deposit at the rate of Rs.250 per sq. ft. per month, however, this court by this order dated 28th July, 2015 reduced the same to Rs.200/- per sq. ft. per month.

7. The petitioner, aggrieved by the order dated 28th July, 2015 instituted a special leave petition No. 27886/2015 before the Hon'ble Supreme Court. Special Leave Petition was dismissed on 01.10.2015. However, in the said order, it was stated that in case, the petitioner has any grievance he is at liberty *"to move the appropriate forum in accordance with law"*

1.2005 (1) SCC 705

2.2009(5) ALL MR 1001.

8. Although, it was very obvious that the appropriate forum in the present context would be seek a review of the order dated 28th July, 2015 made by this Court, the petitioner for reasons, which certainly cannot be styled as bonafide, chose institute a review petition No. 6/2016 before the Appellate Bench of the Small Causes Court seeking review of the order dated 29th January, 2015 made by the Appellate Bench. This was notwithstanding the fact the order dated 29th January, 2015 made by the Appellate Bench of the Small Causes Court had already merged to the order made by this court on 28th July, 2015. And further SLP against the order of this court dated 28th July, 2015 had already been dismissed by the Hon'ble Supreme Court on 1st October, 2015.

9. The petitioner, on the basis of pendency of such misconceived Review Petition neither deposited the amount in terms of the order dated 29th January, 2015 nor handed over the possession of the suit premises to the landlord. At this stage, learned counsel for the petitioner pointed out that an amount of Rs.4,36,000/- was paid by the petitioner as one time payment. Again this is indicative of the complete lack of bonafides on the

part of the petitioner. In terms of the order dated 29th January, 2015 and 28th July, 2015, the petitioner was required to deposit an amount of almost of Rs.3,46,000/- per month. Accordingly, deposit of paltry amount of Rs.4,36,000/-, only once, is hardly any compliance or act indicative of bonafides.

10. The review petition was dismissed by Appeal Court on 3rd May, 2017. Thereafter, the petitioner has instituted the present review petition after delay of 1082 days. Learned counsel for the petitioner states that the delay is only 700 days or thereabout. The quantum of delay is no doubt great, however, the lack of bonafides is even greater. There is absolutely no sufficient cause shown to explain such inordinate delay. The so-called cause shown is completely bereft of any bonafides. It is required to be noted that the petitioner has nothing but abused the judicial process. The petitioner has availed benefits of interim relief, without the condition subject to which it had been granted. In this manner, the petitioner has unjustifiably resisted execution application No.126/2016 which is pending before the Executing Court. Learned counsel for the petitioner has already placed on record, reluctantly an application dated June, 2017 by which, the

petitioner applied for adjournment in the execution proceedings on the ground of pendency of review petition. Mere pendency of review petition is neither a ground for seeking adjournment nor a ground for resisting the execution. However, since the petitioner is bent upon abusing the process, the petitioner has applied for adjournment only on the ground of pendency of the review petition, even though the review petition was instituted after a delay of 1082 days or atleast 700 days.

11. There are absolutely no bonafide in the conduct of the petitioner. It is quite obvious that the petitioner could not have applied for review before the Appellate Bench of the Small Causes Court, Mumbai, once the order of the Appellate Bench had already been merged with the order made by this Court. As noted earlier, even the special leave petition against the order of this court had been dismissed. The petitioner in such circumstances cannot claim any benefit of Section 14 of the Limitation Act.

12. This civil application is therefore dismissed with cost assessed at Rs.2,00,000/-. The cost shall be paid by the petitioner within a period of two weeks from today. The executing court to

ensure such cost are recovered from the petitioner.

13. Since the interim order granted by the appellate court was subject to the condition of deposit and since such condition has been flagrantly breach by the petitioner, it is obvious that there is no stay order in operation as of today. The petitioner has by abusing the judicial process delayed the execution proceeding before the Executing Court. Accordingly, the executing court is directed to dispose of the execution proceedings in accordance with law within a period of six weeks from today.

14. The petitioner is directed to appear before the executing court on 4th September, 2017 at 11 pm and produce the authenticated copy of this order.

15. Considering the conduct of the petitioner, there is serious doubt whether the petitioner will comply with this direction. Therefore, the Registry of this court is directed to forward the authenticated copy of this order to the Presiding Officer of the Small Causes Court at Mumbai taking up execution application No. 126/2016 in T.E.& R Suit No. 110/126 of 2006.

16. This Civil application and consequently the review petition itself are dismissed with cost as aforesaid. However, this matter is directed to be placed on 11th September, 2017 on the supplementary board for reporting compliance. The petitioner is directed to file affidavit as regards production of authenticated copy of this order before the Executing Court as well as to make a statement whether the amount of cost as now awarded has been deposited before the Executing Court.

17. At this stage, the learned counsel for the petitioner on the basis of instructions from the petitioner who is present in the court states that the petitioner will hand over the possession of the suit premises to the respondent – landlords within a period of 15 days from today. Learned counsel for the petitioner states that petitioner will file an undertaking to this effect in the course of the day. On this basis, learned counsel for the petitioner submits the quantum of cost be either be waived or atleast reduced. Learned counsel for the petitioner clarifies that such handing over of the possession of the suit premises will be without prejudice to the rights and contentions of the petitioner in the pending appeal

before the Appellate Bench of Small Causes Court.

18. In case, the petitioner does file, an undertaking in this court in the course of the day and further, reports to the Executing Court, the factum of delivery of possession of the suit premises within a period of 15 days from today, then the cost imposed by this order shall stand waived. However, if this is not done without prejudice to any other action permissible under the law, the cost imposed by this order shall stand and will have to be paid by him.

Afternoon Session

19. In the afternoon session the learned counsel for the petitioner has mentioned that the petitioner is neither willing to give any undertaking nor willing to vacate suit premises but that the petitioner will contest the execution proceedings. Accordingly, the order for payment of cost remains.

(M.S. SONAK, J.)