

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 707 OF 2016
IN
CIVIL REVISION APPLICATION NO. 211 OF 2007

1.	Suresh R. Thakkar (since deceased)	
2.	K. R. Ashar (since deceased)	
3.	Narendra R. Ashar	.. Applicant
<u>In the matter between :</u>		
	Suresh R. Thakkar & Anr.	.. Petitioners
	vs.	
	Prakash B. Hinduja	.. Respondent

Mr. P. J. Thorat for Applicant.
Mr. Manoj Bhatia for Respondent.

CORAM : M. S. SONAK, J.
DATE : 14 MARCH 2017

P.C :

1] Heard Mr. Thorat for the applicant and Mr. Bhatia for the respondent.

2] By this civil application, the applicant seeks a recall of the order dated 9 June 2015, by which, civil revision application instituted by the applicant came to be dismissed.

3] Mr. Thorat submits that the delay of 364 days in instituting the civil application has been sufficiently explained in paragraphs 6 and 7. He submits that for reasons beyond the control of the applicant, his Advocate could not remain present on 9 June 2015 when the civil revision application was dismissed. Mr. Thorat submits that

this application is in the nature of an application under Order IX Rule 9 of CPC since, the civil revision application came to be dismissed on account of the absence of the applicant or the applicant's Advocates. Even otherwise, on merits, Mr. Thorat submits that the order dated 9 June 2015 dismissing the civil revision application is required to be reviewed since, what was allegedly allotted to the respondent was only some table space and not the entire suit premises.

4] There is really no proper explanation for the delay of 364 days in taking out the civil application. However, even if such explanation is to be accepted, from the perusal of the order dated 9 June 2015, it is quite clear that the subject order was not made only on account of the absence of the applicant or his Advocate. The order dated 9 June 2015, deals with the matter on merits. The matter was dealt with on merits after afford of several opportunities to the applicant and the applicant's Advocate.

5] In the aforesaid regard, reference is required to be made to the observations in paragraph 2 of the order dated 9 June 2015, which reads as follows :-

"2. On 11/02/2011, the Petitioners applied for some time in order to engage a Senior Advocate. On 16/03/2011, neither the Petitioners nor their Advocate appeared and this Court made it clear that in case the

Advocate for Petitioners does not remain present on the next date, the petition shall be disposed of in his absence. On 12/12/2011, as none appeared for the Petitioners, the Civil Revision Application was dismissed for non prosecution. Thereafter, the Civil Revision Application was restored by order dated 01/02/2012. On 20/03/2014, at the behest of the Respondent, the Civil Revision Application was expedited and was taken up for hearing on 08/06/2015. On the said date, neither the Petitioners nor their Advocate was present. After hearing the learned Counsel for Respondent for some time, the matter was adjourned to 09/06/2015, in order to afford yet another opportunity for either the Petitioners or their Advocate to appear in the matter. Today when the matter is called out at 4.00 p.m., again, neither the Petitioners nor their Advocate is present. In such circumstances, there is no option other than to proceed to dispose of this Civil Revision Application on its own merits in the absence of the Petitioners or their Advocate."

6] Learned counsel for the respondent points out that the civil revision application was dismissed for non prosecution on at least two occasions in the past. If this is correct, then it is apparent that the applicant is only interested in prolonging the matter by some means or the other. The present application also appears to be an attempt to once again prolong the matter.

7] On merits, this court has already held that the issue as to whether table space was allotted or not is essentially an issue of fact. The appellate bench based on the material on record has already recorded a finding that the licence was in respect of a distinct portion of the suit premises being room no. 9A. There was

no perversity detected in the record of this findings of fact. Accordingly, no case is made out for even review of the order dated 9 June 2015.

8] For the aforesaid reasons the civil application is dismissed with costs of Rs.5,000/- (Rupees Five Thousand). Learned counsel for the respondent states that the costs can be paid to the Kirtikar Law Library. Accordingly the applicant to pay costs of Rs.5,000/- (Rupees Five Thousand) within a period of four weeks from today.

(M. S. SONAK, J.)

Chandka