

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 230 OF 2017
IN
REJECTED CASE NO. 656 OF 2016
IN
WRIT PETITION NO. 1690 OF 2015

[REVIEW PETITION (STAMP) NO. 28601 OF 2015]
WITH
CIVIL APPLICATION NO. 2784 OF 2016
IN
REJECTED CASE NO. 656 OF 2016
WITH
REJECTED CASE NO. 862 OF 2016
IN
REJECTED CASE NO. 656 OF 2016

M/s. Abats & K. B. Auto Traders & Ors.	..	Applicants
vs.		
Sau. Purnima Ashok Shah	..	Non-Applicant (Original Respondents)

Mr. A. P. Wachasundar for Applicant / Appellant.

CORAM : M. S. SONAK, J.
DATE: 27 JANUARY 2017

P.C :

1] This court, by order dated 14 August 2015 disposed of writ petition no. 1690 of 2015.

2] As against the same, the original petitioner has instituted review petition. Since, the same was not instituted within the prescribed period of limitation, an application for condonation of delay was filed alongwith.

3] There were no steps taken in the application seeking condonation of delay. Despite several opportunities, no service was effected upon the respondents. Ultimately, Registrar Judicial, has dismissed civil application for condonation of delay.

4] Undeterred, the applicant has taken out yet another civil application no. 230 of 2017 seeking setting aside of Registrar's Order and restoration of the civil application. Again, since there was delay of 119 days in taking out civil application, yet another civil application for condonation of delay has been filed.

5] Learned counsel for the applicant was permitted to make submissions in review petition, in order to find out whether indeed, any case of error apparent on face of record is made out.

6] Learned counsel for the applicant submits that in this case, powers of Small Causes Court had been conferred upon the trial court at Nashik since there is no Small Causes Court available at Nashik, as against exercise of powers by the trial court, the applicant did preferred an appeal to the appellate authority. However, he submits that the appellate powers were exercised in a restrictive manner. He submits that since powers were conferred upon the trial court, appeal as contemplated by Section 96 of the

CPC was available and the appellate court could have exercised powers under section 96 of the CPC.

7] There is absolutely no substance in the contention raised. In the first place, such a contention was never raised earlier. Secondly, it cannot be said that the applicant was in any manner disabled in the course of his appeal against the order made by the trial court. That apart, case of the applicant was fully considered even while disposing of the main writ petition. There is absolutely no case of any error apparent on face of record is made out.

8] From the manner the matter has proceeded, it is obvious that the applicant seeks to abuse the process of the court. In terms of the order of the trial court, the applicant was required to hand over vacant possession of the suit premises and also pay damages / mesne profits. Learned counsel for the applicant is not quite clear as to whether the amounts have been paid, though, such amounts had been reduced by this court in the order of which review is applied for. Learned counsel for the applicant however states that execution is pending.

9] Precisely in order to avoid or protract execution, this review petition was instituted. Thereafter, no proper steps were taken in the review petition, even though, the same was instituted after a

delay. Ultimately, the application for condonation of delay was also dismissed and thereafter, the application for restoration again accompanied by condonation of delay came to be taken out. On the basis of pendency of all these proceedings, it is obvious that the applicant has been delaying execution of the main order made by the trial court some time in the year 2013.

10] Accordingly, the civil applications as well as the review petition is dismissed with costs of Rs.25,000/- (Rupees Twenty Five Thousand). The costs to be deposited before the executing court within a period of four weeks from today. Registry to transmit authenticated copy of this order to the Civil Judge, Senior Division at Nasik (main jurisdiction), which is dealing with the execution of decree in Special Civil Suit No. 589 of 2011 within a period of two weeks from today.

11] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)