

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9335 OF 2017**

Lachhubai wd/o Govindji Keshvji (deleted since
deceased) & Ors ...Petitioners
Versus
The Board of Trustees of Port of Bombay & Anr ...Respondents

Mr Vasim Siddiqui, *i/b Kunal Bhanage, for the Petitioners.*
Ms Sneha B Pandey, *i/b Motiwalla & Co, for the Respondent No. 1.*

CORAM: G.S. PATEL, J
DATED: 6th November 2017

PC:-

1. Heard.
2. The challenge is to an order dated 27th September 2011 passed by the Court of Small Causes in a revision application filed by the present Petitioners.
3. The Respondents are the original Plaintiffs. They filed LE & C Suit No. 183/298/1979 against one Lacchubai, widow of one Govindji Keshavji. She died pending the suit and her legal heirs and representatives were impleaded. Defendant No. 2 was alleged to be a sub-tenant of the premises. All these Defendants filed their

written statements but did not appear at the time of trial. The suit was decreed in favour of the Plaintiffs.

4. Defendants Nos. 1(a) to 1(f) filed then Miscellaneous Notice No. 116 of 2007 under Order IX Rule 13 for setting aside this decree. The Notice was decided in favour of the Defendants but subject to this condition: that the Defendants would pay costs of Rs.1,500/- within three days and would then make payment of Rs.2,00,000/- towards arrears of the settlement amount directly to the Plaintiffs. In default, the order of restoration of suit and setting aside the decree was to stand cancelled.

5. The Defendants did not comply with this order. They filed instead another Interim Notice No. 714 of 2009 seeking an extension of time and a modification of the previous order. They sought to have the delay condoned. The Plaintiffs did not reply to this. The trial court dismissed the Interim Notice after hearing both sides. Against that order the present Writ Petitioners filed a revision application.

6. Before the Revisional Court the Defendants/Writ Petitioners submitted that they had deposited the amount of Rs.2,00,000/- and paid the costs. This was informed to the trial Judge. It was alleged that the trial Judge did not take this into account. He did not take into account the fact that the constituted attorney of the Defendants was unwell and, according to the writ Petitioners the trial court wrongly rejected the application under Order IX Rule 13. They

maintained that time could have been extended under Section 148 of the Code of Civil Procedure 1908.

7. The Revisional Court carefully considered the rival submissions. It held that there was no defect about the procedure, nor any manifest error on the point of law or any perversity. It held against the Defendants on the question of interpretation of Section 148 and in my view that part of the judgment under appeal calls for no interference.

8. What remained was whether the application for delay condonation ought to have been allowed. Here Defendant no. 1(c) filed an affidavit only stating that he could not comply with the order of costs because (a) he was a senior citizen, and (b) he was unwell for three years, suffering from herpes, kidney stones, dysentery and many other problems. He was hospitalised. He underwent a cataract operation. He had to go his home town to take rest. In support of any of these, the Applicants filed not a single document. They proceeded instead on the basis that since the Plaintiffs did not file a reply, therefore whatever the Applicants said had to be accepted as correct by non-traverse. The Revisional Court rejected the argument, and in my view quite correctly. It is not open to a party to state grounds in these generalities and in fact the Revisional Court was moved to observe that in his affidavit, Defendant no. 1(c) did not bother to even name the village or home town to which he supposedly repaired to take rest. There was not a single document before the court and therefore the court quite correctly held that there was insufficient cause shown to condone the delay.

9. In paragraph 28, the Revisional Court set out the dates on which the payments were made and in the next paragraph noted that costs were paid two years late without any explanation. It also found that Defendants nos. 1(a), (b), (d), (e) and (f) were doing business at Karad, Sangli, Satara and Panvel and were not using the premises.

10. It is not possible, in these circumstances, to say that the impugned order is so perverse or misdirected that a court in its writ jurisdiction must intervene. In my view, the impugned order calls no interference.

11. The writ petition is rejected. There will be no order as to costs.

(G. S. PATEL, J)