

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

CIVIL REVISION APPLICATION NO.947 OF 2014

Shri. Rajaram Yadav (Since Deceased)

Tirathnath Rajaram Yadav and others

..Applicants

Versus

Haji Mohammed Shafi Nasibdar

..Respondent

Mr. Abhishek Deshmukh a/w Ms. Radhika S. Sawant i/by Mr. S. A. Sawant for the Applicants.

Mr. R. B. Parab for the Respondent.

CORAM : R. M. SAVANT, J.

DATE : 29th MARCH, 2017

PC.

1 The revisionary jurisdiction of this Court is invoked against the order dated 26.08.2014 passed by the Appellate Bench of the Small Causes Court, Mumbai, by which order, the application being Marji Application No.208 of 2014 in Appeal No.746 of 2004 in RAE Suit No.752 of 1992 came to be rejected.

2 The Applicants herein are the heirs of one Ram Sajiwan Yadav being his sons. The Applicants had filed Appeal No.271 of 2004 challenging the judgment and decree dated 11.09.2003 passed by the Learned Judge of the Small Causes Court ordering the eviction of the Applicants. It seems that the said Appeal was listed from time to time before the Appellate Bench of the Small Causes Court however no

appearance was put up on behalf of the Appellants. The Appeal ultimately came to be dismissed for non-prosecution by the Appellate Bench of the Small Causes Court by order dated 10.05.2013. On getting knowledge of the dismissal of the Appeal for non-prosecution, the Applicants filed the application being Marji Application No.208 of 2014 for condonation of delay in filing the application and for restoration of the Appeal to file. Since there was a delay of about 10 months in filing the application, the same was sought to be explained by the Applicants by stating that Kamleshkumar Yadav had to leave for Allahabad so as to take care of his ailing mother who was undergoing treatment there. It is in the said process that the delay of 10 months has occasioned in filing of the application. Significantly, other son of the said Ram Sajiwan Yadav i.e. Laxminarayan Yadav was very much present in Mumbai but the reason for the delay was attributed to the absence of Kamleshkumar Yadav who was the other son of the said Ram Sajiwan Yadav. The said case of the Applicants was denied by the Respondent herein i.e. the decree holder. It was stated in the said reply that the Applicants have come with a false case that the Applicant No.3-b i.e. Kamleshkumar Yadav is the cousin of the Applicant No.3-a Laxminarayan Yadav. It was contended that the documents in support of the case of the Applicants that their mother was unwell at Allahabad are in respect of the address at Thane from which it

is seen that the mother was taking treatment at Thane. It was also contended that some of the certificates are not in the name of the Applicants mother but are in the name of one Dularidevi whereas the name of the mother of the Applicants is Amaravati Devi. The Respondent/decreed holder had therefore sought dismissal of the application filed for restoration by condoning the delay of 10 months in filing the same.

3 The Trial Court i.e. the Appellate Bench of the Small Causes Court considered the said application and has by the impugned order dated 26.08.2014 rejected the said application. The Appellate Bench of the Small Causes Court recorded a finding that the Applicants have not come with clean hands in as much as though Laxminarayan Yadav is the brother of Kamleshkumar Yadav, the said Kamleshkumar Yadav has been shown as the cousin of the said Laxminarayan Yadav. In so far as the medical certificates are concerned, the Appellate Bench has observed that the said certificates are in the name of one Dularidevi, whereas the name of the mother of the Applicants is Amaravati Devi Yadav. The Appellate Bench also adverted to the fact that the certificates relate to a person undergoing treatment at Thane, whereas it is the case of the Applicants that the mother of the Applicants was undergoing treatment at Allahabad. The Appellate Bench was therefore of the view that no

discretion could be exercised in favour of the Applicants in view of the fact that the Applicants had not approached the Appellate Bench with clean hands and by candidly stating their case in the said application. The Appellate Bench was therefore of the view that the Applicants have not made out sufficient case for the condonation of delay of 10 months in filing the application and accordingly dismissed the application by the impugned order dated 26.08.2014.

4 The Learned Counsel appearing on behalf of the Applicants would contend that the Applicants had inadvertently failed to bring to the notice of the Appellate Bench that the certificates were in respect of the mother of Kamleshkumar Yadav and not the mother of Laxminarayan Yadav and therefore there is discrepancy in the names. The Learned Counsel would contend that the Applicants are ready and willing to file further affidavits to clear the doubts if any arising out of the two names which are appearing in the records as being the mother of the said Laxminarayan Yadav and Kamleshkumar Yadav.

5 In my view, it is not possible to accept the contentions urged on behalf of the Applicants. As indicated above, the Applicants had approached the Appellate Bench on the premise that the said Kamleshkumar Yadav is the cousin of Laxminarayan Yadav when ex-facie

it is seen that they are brothers and the sons of the said Ram Sajiwan Yadav. Unless they were brothers there was no necessity to join the said Kamleshkumar Yadav as a heir of the original tenant Ram Sajiwan Yadav. If that be so, the discrepancy in the name of the mother of the Applicants assumes importance especially in the context of the fact that the Applicants are seeking to invoke the discretionary jurisdiction of the Appellate Bench. In my view, therefore, the impugned order passed by the Appellate Bench rejecting the application filed by the Applicants for restoration of the Appeal by condoning the delay cannot be said to suffer from any error of jurisdiction or any other illegality or infirmity for this Court to exercise its revisionary jurisdiction. The Civil Revision Application is accordingly dismissed.

[R.M.SAVANT, J]