

JPP

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

CIVIL REVN. APPLICATION NO. 607 OF 2016

Vijay Chandrakant Sonar and Anr. ... Applicants.

V/s.

Mr. Tanaji Shankar Potdar and Anr. ... Respondents.

Mr. Shailesh Chavan a/w. S.R. Ingule for the Applicants.

Mr. Kishor Hase a/w. Mahesh Chandan Shiv for the Respondents.

CORAM : N.M. Jamdar, J.

23 February, 2017.

Oral Order :-

A Suit was filed by the Respondents for eviction of the Applicants on the ground that they are gratuitous licensees. The suit was decreed on 9 July 2014. An Appeal was filed by the Applicants along with application for condonation of delay of 419 days. This application was rejected by the learned District Judge by the impugned order dated 22 August 2016.

2. Heard the learned Counsel for the parties. The affidavit sworn by the Applicant No.2 is taken on record. It is informed by

the Advocate for the Applicant that the Applicant No.2 is present in the Court and is made fully aware of the content of the affidavit.

3. The learned Counsel for the Respondents has placed on record the Roznama of the proceedings which shows that twice “no cross” order was passed against the Applicants. The Applicants were also present in the Court and had sought adjournments. Therefore, the Applicants were fully aware of the Court proceedings. After the “no cross” order was passed, the suit came to be decreed. Thereafter also the Applicants do not proceed diligently. The only reason given in the application for condonation of delay was they solely relied on their Advocate to inform them of the progress of the Suit. This explanation cannot be accepted. The Applicants had participated in the suit. They were fully aware of the proceedings. After the “no cross” order was set aside at least they should have been diligent. Finding against them that they are gratuitous licencees, therefore, the learned District Judge was justified in taking strict view of the matter and not condoning the delay of 419 days of which there is no adequate explanation.

4. The learned Counsel for the Applicants, after arguing for some time submitted an undertaking of Applicant No.2, on behalf of herself and on behalf of Applicant No.1- her husband, that if the delay is condoned, the Applicants are ready to hand over the

possession of the suit property to the Court Receiver and the Court Receiver to appoint the Respondents as agents of the Court Receiver, subject to the outcome of the Appeal. The learned Counsel for the Respondents is not averse to this request.

5. In view of the consensus between the parties regarding the affidavit and the stand taken as aforesaid, I am of the opinion that interest of justice will be served if the Revision Application is disposed of with the following directions :-

- (i) The impugned order dated 22 August 2016 passed by Ad-hoc District Judge, Pune is quashed and set aside.
- (ii) Civil Application No. 778 of 2015 filed for condonation of delay in filing the Appeal is allowed.
- (iii) The Appeal filed by the Appellant in the District Court, Pune stands restored to file.
- (iv) The learned District Judge, Pune will appoint a suitable Court Receiver over the suit property.
- (v) The Court Receiver will immediately take symbolic possession of the suit property.
- (vi) The Court Receiver will give eight weeks' time to the Applicants to hand over the possession to the Court Receiver, who will then appoint the

Respondents as an agent of the Court Receiver without payment of any royalty and put them in possession.

- (vii) The appointment of the Respondents as an agent of the Court Receiver will be subject to the outcome of the Appeal. If the outcome of the Appeal is in favour of the Applicants, then the learned District Judge would forthwith terminate agency of the Respondents and direct the Court Receiver to place the Applicants back in possession of the suit property.

6. It is open to the Applicants to make a request to the learned District Judge for expeditious disposal of the Appeal.

7. The Civil Revision Application is disposed of in above terms.

(N.M. Jamdar, J.)