

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

CIVIL REVISION APPLICATION NO. 200 OF 2017

Harishchandra Bapu Deshmukh & Ors.	...Applicants
Versus	
Suresh Rajaram Shinde & Ors.	...Respondents

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Mr.Bhushan Walimbe for the Applicants.
Mr.Saurabh Oka for Respondent Nos. 1 and 2.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 07, 2017**

P.C. :

1. Not on board. Upon mentioning, taken on board.

2. This Civil Revision Application is directed against the order dated 10.08.2016 passed by the learned Ad-hoc District Judge-2, Raigad-Alibag thereby allowing Civil Misc. Application No. 57 of 2015 filed by respondent nos.1 and 2.

3. The facts of the case are very peculiar.

4. Respondent nos. 1 and 2 are the original plaintiffs. They had filed a Regular Civil Suit No. 24 of 2011 before Civil Judge, Junior Division, Panvel for declaration and injunction. In the said Suit, the relief of specific performance was not asked. It was held by the learned Civil Judge, Junior Division, Panvel that the Suit was not maintainable. However, the point of pecuniary jurisdiction was raised and the learned

Judge had dismissed the Suit on the ground of pecuniary jurisdiction on 10.07.2013. Thereafter, respondent nos. 1 and 2 had challenged the said order by filing Writ Petition No. 6925 of 2013. This Court while deciding Writ Petition No.6925 of 2013 filed by respondent nos. 1 and 2 observed that the order of dismissal of the Suit ought to have been challenged in appeal under Section 96 read with Order 41 Rule 1 of the Code of Civil Procedure, 1908 and therefore, the said Writ Petition was withdrawn as disposed of on 08.08.2013 with liberty to file a Regular Civil Appeal. However, instead of filing the Civil Appeal, respondent nos. 1 and 2/original plaintiffs had filed another Special Civil Suit No. 481 of 2013 before the Civil Judge, Senior Division, Panvel on the same cause of action. Thereafter, the application was filed by the applicants/defendants under Order 2 Rule 2 Sub Rule 2 of the C.P.C. that relief claimed in Special Civil Suit No. 481 of 2013 was not maintainable. Again, the objection was raised under Order 2 Rule 2 of C.P.C that the same relief and same cause of action had sought in the earlier Suit and the said Suit was dismissed. The said application was partly allowed, vide order dated 08.12.2014 passed by the learned Civil Judge, Senior Division, Panvel and the reliefs claimed by the plaintiffs regarding specific performance of agreement dated 05.07.2017 and for possession and transfer of the suit property by tripartite agreement were rejected and for remaining reliefs, the Suit to proceed. Again,

respondent nos.1 and 2/original plaintiffs had preferred Writ Petition (St.) No. 1692 of 2015 against the order dated 08.12.2014 passed by the trial Court. On 25.02.2015, respondent nos. 1 and 2/ original plaintiffs desirous to take steps in respect of challenging the earlier order dated 10.07.2013 passed by the learned C.J.J.D., Panvel in Regular Civil Suit No. 24 of 2011. Thereafter, respondent nos. 1 and 2/original plaintiffs had filed the application for condonation of delay of 485 days. The said application was numbered as Civil Application No. 57 of 2015 and it was allowed. Hence, this Writ Petition.

5. The learned counsel for the applicants/defendants has submitted that it is a case of abuse of process of law. He has further submitted that instead of filing the Civil Appeal at the first instance respondent nos. 1 and 2/original plaintiffs had filed Writ Petition and thereafter made a statement before this Court that he is going to file an appeal. Instead of filing an appeal, he had filed Special Civil Suit No. 481 of 2013. The said Suit was not maintainable and dismissed, as the same reliefs sought in the Suit were not maintainable under Order 2 Rule 2 of C.P.C. Thereafter, they had filed a Writ Petition before this Court. The Writ Petition has been kept pending and Regular Civil Appeal No. 147 of 2016 was filed after an inordinate delay of 485 days. This delay is not explained. There is no bonafides. Respondent nos. 1 and 2/original plaintiffs have mischievously taken recourse of wrong proceedings to

protract the matter. He has further submitted that the applicants/defendants are dragged in the proceedings by the original plaintiffs since last 10 year and by allowing this application they will be again leading with the same issues for further many years. He has further submitted that the reason given for condonation of delay is that they engaged another advocate and it is a false statement made before the Court. He has further submitted that both Suits were in fact filed by same advocate and the same advocate represented respondent nos.1 and 2/ original plaintiffs in both Writ Petitions in the High Court. Thus, the plaintiffs in fact have committed forgery in making false statements in the Court on oath. He has further submitted that whatever reasons given in the application for condonation of delay are not sufficient reasons and it ought to have been dismissed and the order 10.08.2016 passed by the Appellate Court is to be set aside.

6. Per contra, the learned counsel for respondent nos. 1 and 2 has submitted that it was bonafide mistake of respondent nos.1 and 2/original plaintiffs that instead of filing an appeal they had filed the Suits. Respondent nos.1 and 2/original plaintiffs have acted upon the advice given by their advocate. He has further submitted that respondent nos. 1 and 2/original plaintiffs are prosecuting the matter as they are really interested to claim their rights in the suit property. He has further submitted that no false statements were made by

respondent nos. 1 and 2/original plaintiffs. He concedes that the same advocate had filed the Suits and also the appeal. He also concedes that same advocate had appeared in the Writ Petition. He has further submitted that reasons given in the application are to be considered and the order of condonation of delay is to be allowed.

7. After considering the history of the matter, it is clear that the steps taken by respondent nos. 1 and 2 /original plaintiffs while prosecuting the matter are erroneous. Moreover, in the first Writ Petition, when this Court observed that against the order of dismissal of the Suit, an appeal lies, respondent nos. 1 and 2/original plaintiffs made a statement before this Court that they want to file a Regular Civil Appeal, but instead of filing an appeal, they had filed Special Civil Suit No. 481 of 2013. It cannot be said that this is done deliberately to protract the trial. It appears that this is done either due to negligence or due to wrong legal advice given to the plaintiffs/respondents. It is also admitted that there is delay of 485 days. However, if the parties are prosecuting the matter in other Court bonafide in any form that is a good ground to condone the delay of that period. In this case, two Writ Petitions and one Civil Suit were filed, and therefore, the order dated 10.08.2016 passed by Appellate Court cannot be faulted with, subject to increase of costs.

8. The order dated 10.08.2016 passed by the learned Ad-hoc District Judge-II, Raigad, Alibag is hereby maintained. However, the payment of costs is modified. The delay is condoned, subject to payment of costs of Rs. 20,000/- to the applicants' i.e. respondent nos. 1 to 4 in appeal. The said costs is to be paid within a period of two weeks.

9. In view of the above, Civil Revision Application is disposed of.

(MRIDULA BHATKAR, J.)