

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 631 OF 2015
IN
CIVIL REVISION APPLICATION NO. 376 OF 2007
WITH
CIVIL APPLICATION NO. 25 OF 2016
IN
CIVIL REVISION APPLICATION NO. 376 OF 2007

Sau. Snehalata Pandurang Dhure	..Applicant
<u>In the matter between :</u>	
Sau. Snehalata Pandurang Dhure	..Applicant
vs.	
Shri Vikram Anna Kharat	..Respondent

Mr. Agasti A. Vibhute for Applicant.
Ms Snehalata Pandurang Dhure – Applicant-in-person present.
Mr. U. B. Nighot for Respondent.
Ms Vaishali Nimbalkar – AGP for State.

CORAM : M. S. SONAK, J.
DATE: 21 SEPTEMBER 2017

P.C :

1] Civil application No. 25 of 2016 seeks recall of order dated 12th December 2011, by which the applicant's CRA 376 of 2007 was dismissed for non prosecution. Civil application No. 631 of 2015 seeks condonation of delay of 3 years 10 months and 18 days in applying for restoration. It is only appropriate that both these applications are considered and disposed of together.

2] In the civil applicants, it is stated that the applicant had already engaged an Advocate to appear in the matter. The CRA was

admitted in the year 2008 and even interim relief was granted subject to payment of compensation. On 12th December 2011, when the matter was called out for final hearing, the applicant's Advocate did not remain present and therefore the CRA was dismissed for non prosecution. The applicant states that she was not aware of the dismissal order and acquired knowledge of the same somewhere in November 2015, when, she was served with the process in execution. The applicant states that she is 65 years of age and the dismissal for non prosecution is really for reasons not attributable to her but to her Advocate. She states that her Advocate has also stopped practice and in any case there was no intimation as regards the dismissal for non prosecution. In these circumstances, it is submitted that the delay be condoned and the CRA is restored.

3] Mr. Nighot, learned counsel for the respondent submits that no sufficient cause has been shown to explain inordinate delay of almost four years. He submits that the statement that the applicant's previous Advocate has stopped practicing is false, because, said Advocate, has thereafter, in some other matter, served a notice upon Advocate Mr. Nighot. Mr. Nighot submits that compensation at the rate of Rs.700/- per month was deposited by the applicant only upto 30th April 2008. Thereafter, no payment has been made

towards compensation. He submits that the applicant has continued to enjoy possession of the suit premises without making any payments for the same. He points out that the suit premises are an open plot of about one and half gunthas upon which, there is a structure which was tenanted to the applicant. He points out that the premises are located at Shivaji Nagar, Pune, which is prime locality. He submits that market rent for such premises would be in the region of at least Rs.35,000/- per month.

4] Mr. Vibhute, learned counsel for the applicant, upon obtaining instructions from the applicant, who is present in Court in person, states that the applicant is willing to pay costs of Rs.1,00,000/- (Rupees One Lakh) to the respondent. Further, the applicant, did not pay / deposit compensation amount beyond 30th April 2008 because, this Court, in its order dated 30th April 2008 had granted interim relief subject to the applicant depositing compensation at the rate of Rs.700/- per month from December 1993 till date. Accordingly, this order was construed to mean that compensation was required to be deposited only upto 30th April 2008. On instructions, he states that compensation beyond 30th April 2008 and till the end of this month i.e. 30th September 2007 at the rate of Rs.700/- will be paid directly to the respondent.

5] In this case, it is apparent that the applicant had engaged an Advocate to appear on her behalf. From this, it is reasonable to proceed on the basis that the applicant expected her Advocate to attend the matter at the stage of final hearing. In any case, there is nothing unreasonable in the explanation of the applicant that she should have at least been informed of the dismissal of the CRA within some reasonable period from the date of its dismissal. There is nothing on record to indicate that the applicant was so informed. No doubt, it is also the duty of the applicant to pursue the matter with her own Advocate from time to time to find out about the status of the matter. However, considering the position that the applicant is a senior citizen, it cannot be said that there are any malafides involved on her part.

6] In a matter where condonation is applied for, it is possible that there is some lapse on the part of the applicant. Further, in such matters, the quantum of delay is not the sole criteria, but the explanation offered for such delay is required to be analyzed and emphasized upon. Merely because there is some lapse or in some cases even some negligence on the part of the applicant concerned, that by itself is not sufficient to non-suit the applicant or to deny the applicant a hearing on merits. As long as explanation offered does not smack of malafides or is not put-forth as a part of

dilatory strategy, some consideration is warranted.

7] In such matters, the opposite party cannot be altogether forgotten. Admittedly, there is no fault on the part of the respondent in this case, yet, it is the respondent, who has suffered the most. Therefore, it is imperative that costs are awarded in favour of the respondent in a situation of this nature. In this case, the applicant has offered to pay costs of Rs.1,00,000/- (Rupees One Lakh). These costs, in the facts and circumstances of the present case, appear to be appropriate. Further, the applicant, has offered to directly pay to the respondent compensation at the rate of Rs.700/- per month w.e.f. 1st May 2008 till 30th September 2017. This is also yet another consideration which is required to be held in favour of the applicant.

8] Upon cumulative consideration of the aforesaid, both the civil applications are allowed. The order dated 12th December 2011 dismissing the CRA for non-prosecution is recalled. The CRA as well as the interim order granted therein is hereby restored. This shall be however subject to the applicant paying to the respondent within a period of four weeks from today costs of Rs.1,00,000/- as well as the compensation at the rate of Rs.700/- per month effective from 1st May 2008 to 30th September 2017. It is made clear that if the amount of costs and the compensation amount is not paid or, in

case of any difficulty, deposited in this Court within a period of four weeks from today, the applicant shall not have the benefit of this order. The CRA shall then be deemed to have been dismissed for non prosecution and not restored. In case, the said amount is deposited in this Court, the respondent shall be at liberty to withdraw the same unconditionally.

9] Further, considering the circumstances of this case and also the fact that the eviction order was made on the grounds of *bona fide* requirement, place this matter on the final hearing board (High on Board) in the week commencing from 9th October 2017. But the matter will be finally heard only if the applicant complies the conditions subject to which this order has been made.

10] The civil applications are disposed of in the aforesaid terms.

(M. S. SONAK, J.)

Chandka