

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION C. NO.6/2016
IN
CIVIL REVISION APPLICATION ST. NO.25409/2015

Sambhaji Ganpatrao Potdukhe
...Versus...
Sawaikhan Hussainkhan Pathan

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.B. Jawade, Advocate for applicant

CORAM : ARUN D. UPADHYE, J.
DATE : 12.12.2017

1. Heard.
2. The learned Counsel for the applicant submitted that there is a delay of 76 days in filing the revision application. He further submitted that the applicant was ill and was under continuous medical supervision from 1/10/2015 to 16/12/2015. The medical certificate is also filed on record. He, therefore, prayed for condonation of delay.
3. Considering the submission of the learned Counsel for the applicant and upon perusal of the application and medical certificate dated 17/12/2015 which is on record, I am of the view that the delay of 76 days could be condoned, in the interest of justice.
4. Hence, the civil application is allowed. The delay in filing the civil revision application is condoned.

CIVIL REVISION APPLICATION ST. NO.25409/2015

1. Heard.

2. The learned Counsel for the applicant submitted that the application filed under Order VII Rule 11 of the Code of Civil Procedure is for rejection or return of the plaint. He further submitted that the suit filed by the respondent is barred by limitation. According to him, the suit ought to have been filed within three years from 14/5/2000, however, the present suit is filed in the year 2015. The plaintiff has therefore no cause of action to file the suit. The learned 2nd Joint Civil Judge (Junior Division), Warora has wrongly rejected the application (Exh.18). The civil revision application therefore be allowed.

3. Considering the submission of the learned Counsel for the applicant and upon perusal of the impugned order dated 4/7/2015 passed by the 2nd Joint Civil Judge (Junior Division), Warora below Exh.18 in Regular Civil Suit No.25/2015, I am of the view that no interference is called for in the impugned order. The plaintiff has filed Regular Civil Suit No.25/2015 for execution of sale-deed, in alternative, for refund of earnest amount and for injunction. The plaintiff has averred in paragraph nos.17 and 18 about cause of action. It further appears that the defendant appeared in the suit and filed application Exh.18 for rejection of plaint. The plaintiff has also filed reply to the said application and denied the averments made in the said application.

4. After hearing the learned Counsel for both sides, the learned 2nd Joint Civil Judge (Junior Division), Warora has passed order dated 4/7/2015 rejecting the application filed by the

defendant. It appears that the learned trial Judge has rightly considered that the cause of action is specifically pleaded in the plaint and burden is on the plaintiff to prove the same, and therefore, the present application for rejecting the plaint cannot be considered. It is a matter of evidence and that can be considered in the suit itself. The submission put forth on behalf of the applicant therefore cannot be accepted.

5. The Civil Revision Application filed by the original defendant is devoid of any merit and is liable to be rejected and accordingly, the same is rejected. No costs.

JUDGE

Wadkar