

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD***

CIVIL REVISION APPLICATION NO.110 OF 2018

Jyoti Tanhaji Shinde

Applicant

Versus

Shaikh Firoz Shaikh Ismail and others

Respondents.

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Advocate for Applicant : Mr. Patni Pramod F.

Advocate for Respondent 1 : Mr Palsikar Vikrant S.

CORAM : N.M. Jamdar, J.

Dated: 18 December 2018

ORAL ORDER :-

Heard learned counsel for the parties.

2. By this application, the applicant has challenged the order passed by the learned Civil Judge Junior Division, Aurangabad dated 25 April 2018 rejecting the application filed by the applicant. The applicant landlady had instituted a suit for eviction of the defendants from the suit premises. The suit was decreed on 7 July 2016 against defendant no.1 and it was dismissed against defendant nos. 2 and 3. Thereafter, respondent no.1 had raised obstruction to the execution of

the decree. This obstruction proceedings were rejected on 16 June 2017. Thereafter a writ petition was filed by the respondents, which was disposed of on 6 July 2017. The respondent no.1 filed an application in the court of Civil Judge for condonation of delay and to set aside the decree dated 7 July 2016. In this application, the applicant moved an application for rejection of the application that such an application is not maintainable as there is no decree against respondent no.1.

3. Learned Civil Judge has observed in the impugned order that first the question of condonation of delay will have to be considered. Keeping in mind that proceedings instituted by the applicant landlady has been decreed and that execution proceedings are filed and that the Respondent no.1 also earlier moved an obstructionist proceedings, the application ought not have been considered in a pedantic manner. The Courts have to be vigilant that the process of law is not abused. In the impugned order, the learned Civil Judge has not applied mind as the stage at which the proceedings are.

4. In the facts and circumstances, it would be appropriate that the learned Civil Judge decides whether respondent no.1 was entitled to seek setting aside the decree in view of the contention of

the applicant that there is no decree against respondent no.1. The learned Civil Judge will decide the question of maintainability of the application moved by the respondent no.1 first and if the learned Judge comes to the conclusion that such an application is maintainable, then question of condonation of delay be considered. This course of action is necessary in the peculiar facts and circumstances of the case. The learned Judge will decide the said issue within a period of six weeks from today. All the contentions of the applicant and respondent no.1 are kept open as regard the maintainability and other aspects of the case.

5. Civil Revision Application is disposed of in above terms.

(N.M. Jamdar, J.)

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