

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13934 OF 2018

Subhash M. Waghmare
(deceased through L.Rs.)

.. Petitioners

vs.

Gadgemaharaj Maratha
Dharmashala Nyas, Pandharpur
on behalf of

1) Baban G. Kolse Patil and ors.

.. Respondents

Mr. Ajay Joshi for the Petitioners.

Mr. P.M. Jadhav for the Respondent Nos.1 to 3.

CORAM : M. S. SONAK, J.
DATE : 11 DECEMBER 2018.

P.C. :-

1] Heard the learned counsel for the parties.

2] The challenge in this petition is to the order dated 1st January 2018, by which the Appeal Court has dismissed the petitioners' application seeking condonation of delay of four years six months and ten days in instituting appeal against eviction decree dated 16th August 2012.

3] Mr. Ajay Joshi, the learned counsel for the petitioners, submits that the petitioner No.1b's father did appear before the proceedings before the Appeal Court but because the

advocate for the petitioner No.1b's father failed to inform him about the correct dates and the progress of the matter, the petitioner No.1b's father could not remain present. Thereafter, the petitioner No.1b's father expired in 2014. The petitioners, after obtaining knowledge of *ex-parte* decree dated 16th August 2012 instituted an appeal. Mr. Joshi submits that there was sufficient cause for delay because the petitioners were not even aware of the eviction decree until the same was sought to be executed. He points out that the Executing Court issued notice to the petitioners on 13th February 2017 and soon thereafter appeal instituted before the Appeal Court. Mr. Joshi submits that for fault of the petitioners' advocate, the petitioners cannot be made to suffer. He submits that in any case, delay has been properly explained. For all these reasons, Mr. Joshi submits that the impugned order warrants interference. Mr. Joshi further submits that the respondent -landlord is a Trust and therefore, no prejudice as such will be caused to the respondents. He submits that in any case, even if some prejudice were to be caused, the same can always be compensated by costs, but this was not a case where

opportunity to appeal against *ex-parte* decree should have been denied. have been denied.

4] Mr. P.M. Jadhav, the learned counsel for the respondents, points out that the petitioner no.1b's father did appear before the Trial Court for some time but thereafter, abandoned the proceedings. After grant of sufficient opportunities, decree for eviction was made. He submits that it is quite unbelievable the petitioners were unaware of these proceedings. He submits that the Appeal Court has correctly considered the matter and there is no reason to interfere with the impugned order. Mr. Jadhav also points out that the petitioners have been most irregular when it comes to payment of rents or compensation. He points out the petitioners obtained interim relief from the Appeal Court subject to deposit of some compensation amount. However, the compensation amount was never deposited. He submits that this indicates the petitioners were not at all diligent and wish to merely postpone the execution of the decree indefinitely. He, therefore, submits that this petition may be dismissed.

5] The rival contentions now fall for determination.

6] From the record, it is apparent that the petitioner No.1b's father was served with process in the proceedings before the Trial Court. The petitioner No.1b's father even attended the proceedings for some time. Thereafter, however, the petitioner No.1b's father failed to attend the proceedings and *ex-parte decree* of eviction was made by the learned Trial Court on 16th August 2012.

7] There is absolutely no material on record in order to substantiate the allegations against the advocate for the petitioner No.1b's father. Even otherwise it is the responsibility of the petitioners/petitioner No.1b's father to also pursue the matter rather than simply lay blame on the advocate.

8] Even after eviction decree was made, the appeal was instituted after delay of more than 4 and half years. Mr.Jadhav, the learned counsel for the respondents, is right in his submission that it cannot be believed that the

petitioners were unaware of the execution proceedings altogether. There is no material on record that the petitioners were regular in payment of rents even after demise of petitioner No.1b's father and since they have claimed for inherited tenancy rights.

9] The petitioners have indicated no cause, much less any sufficient cause for explaining this inordinate delay of four and half years. The petitioners secured the interim reliefs subject to condition that they shall deposit compensation amount before the Trial Court. Apparently, no such compensation amount was deposited. Therefore, in the facts of the present case, it cannot be said that discretion has been exercised unreasonably or arbitrarily by the Appeal Court in refusing to condone inordinate delay of over four and half years in instituting the appeal against the decree of eviction.

10] For all the aforesaid reasons, there is no case made out to interfere with the impugned order. This petition is therefore dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)