

psv

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

WRIT PETITION NO.3068 OF 2016

Avinash Jagannath Waghdhare

..Petitioner

Vs.

M/s.Thakoor Constructions

..Respondent

Mr.Kunal Bhange for Petitioner.

Mr.P.G. Karande for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 16th JANUARY, 2018

P.C.:

Heard learned Counsel for the parties.

2. The petitioner/tenant is before the Court in this petition being aggrieved by the order dated 30th January 2016 passed by the learned Judge, Small Causes Court at Mumbai, whereby MARJI Application No.714 of 2014 filed by the petitioner seeking condonation of delay of 558 days to file the application for setting aside exparte decree was rejected. The petitioner being aggrieved by the said order, had approached the appellate Court in a Revision Application. The appellate Court by an order dated 30th January 2016 has confirmed the order passed by the learned trial Judge thereby dismissing the revision application of the petitioner.

3. Learned Counsel for the petitioner in assailing the concurrent findings submitted that initially the name of the petitioner/defendant No.1 was incorrectly recorded as Avinash Jagannath Waghmare instead of Avinash Jagannath Waghdhare and therefore, the attempts made to serve the suit summons on 4th May 2009, 5th September 2009 and 30th October 2009 were of no consequence. Learned Counsel for the petitioner however, would not dispute that subsequently the name of the petitioner was corrected by carrying out necessary amendment and instead of “Waghmare”, the name of petitioner was recorded as “Waghdhare” and thereafter fresh service was effected on 29th September 2010 as also on 13th October 2010. It is also not in dispute that despite receipt of the suit summons, the petitioner did not appear in the suit. Consequently, the suit proceeded ex-parte and the same was decreed ex-parte on 5th April 2013. The respondent/plaintiff thereafter initiated execution proceedings. Notice of the execution proceedings was received by the petitioner on 5th October 2013 and on 15th February 2014 the petitioner entered appearance through his Advocate who filed his vakalatnama in the execution proceedings. On 5th October 2013, the petitioner has received a notice of the execution proceedings and in consequence thereto on 15th April 2013 vakalatnama of the Advocate was filed in the execution proceedings. However, there is no explanation in regard to the delay which had taken place between 15th February 2014 to 29th November 2014 when the application was filed by

the petitioner for setting aside ex-parte decree along with application for condonation of delay.

4. A perusal of the application as made by the petitioner seeking condonation of delay also does not make reference to explain the said delay. In paragraph Nos.6 and 7 of the said application, the petitioner has stated that he was under impression that the suit would be taken care of by one Rahivashi Sangh as the petitioner hails from lower middle class family and therefore, could not afford to engage lawyer as the Rahivashi Sangh had engaged a common lawyer and that the petitioner was under the impression that the matter would be pursued by the said lawyer.

5. The learned trial Judge while rejecting the petitioner's application for condonation of delay has refused to accept the reasons which are set out in the delay condonation application by the petitioner and referring to the provisions of Articles 123 of the Indian Limitation Act, 1963 has held that the petitioner had appropriate knowledge not only of the suit on receipt of the suit summons, but also of the decree passed on 5th April 2013 and in the absence of any satisfactory reason to explain the delay of 558 days in filing the application, it was appropriate for the learned trial Judge to reject the said application. These findings of fact are also confirmed by the appellate bench in the revision application.

6. On perusal of the orders of both Courts below, I do not find that there is any infirmity or perversity in the Court's recording findings that the petitioner was not entitled for condonation of delay of 558 days in the clear admitted factual scenario. The conduct of the petitioner was careless. Thus, there is no ground whatsoever for this Court to exercise the jurisdiction under Article 226 and 227 of the Constitution of India to interfere in the finding recorded by the Courts below. The petition is devoid of merits. It is, accordingly, rejected. No costs.

7. At this stage, Mr.Bhange, learned Counsel for the petitioner, submits that the petitioner is willing to pay costs to the respondent/landlord and the same can also be substantial and on payment of such costs, delay be condoned.

8. Considering the facts and circumstances of the case and findings of both the Courts below, it would not be possible to accept the request of Mr.Bhange to exercise such discretion when the facts totally do not so warrant. The requirement of law cannot be rendered meaningless. The conduct of the petitioner to say the least was callous.

[G.S. KULKARNI, J.]