

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.671 OF 2016

IN

CIVIL REVISION APPLICATION NO.430 OF 2016

(Sushiladevi Shivbihari Mishra Vs. Mahesh B. Tiwari)

Office Notes, Office Memoranda of Coram, appearances, Court's orders, or directions, and Registrar's Orders	Court's or Judge's orders
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Mr. Induprakash Tripathi i/b. Mr. C. K. Tripathi for Applicant.
Mr. Akhilesh Upadhyay for Respondent No.10.

CORAM : R. G. KETKAR, J.**DATE : 9TH MARCH, 2018****P.C.:**

Heard Mr. Tripathi, learned Counsel for applicant and Mr. Upadhyay, learned Counsel for respondent No.10.

2. This is an application for recalling the order dated 06.04.2016 after condoning the delay of 72 days in filing the application.

3. Mr. Tripathi submitted that by order dated 06.04.2016, applicant was directed to remove office objections on or before 10.06.2016 failing which C.R.A. was to stand dismissed without further reference to the Court. As the applicant did not remove office objections within the stipulated time, C.R.A. stood dismissed in default. He has taken me through the assertions in the

application and submitted that the delay in filing the application may be condoned and C.R.A. may be restored to the file of this Court.

4. On the other hand, Mr. Upadhyay strenuously opposed the application on the ground that applicant was well aware of the objections raised by the office. Though he was given time upto 10.06.2016, he did not remove the office objections. Not only that, he is also dispossessed from the suit premises on 17.09.2016. He, therefore, submitted that no case is made out for condoning the delay as also for restoration of the C.R.A.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, application is dismissed for non-removal of office objections. In the case of ***Kalipada Das @ Mahanto and others Vs. Bimal Krishna Sen Gupta (decd) by LRs, AIR 1983 SC 876***, the Apex Court has observed thus,

5. The only question is whether the appellant tenants who undoubtedly failed to comply with the Court's order to supply the paper-books within the prescribed time should be visited with such serious consequences of a penal nature as described by the High Court itself. Supplying paper-books is a procedural requirement devised to facilitate rendering justice. In other words, it is a procedural step in aid of justice, and not substantive justice itself. Undoubtedly, Court's orders have to be obeyed. The institution of judiciary may not be able to function if there is no sanction behind the Court's order. But penalty of failure to comply with Court's order providing a procedural stage in aid of justice must be

Commensurate with the gravity of the lapse. If the penalty imposed is disproportionate to the gravity of the lapse or omission, the procedural stage instead of becoming a step in aid of justice would be a roadblock to justice and at this stage it would be advantageous to recall what this Court said in *Sangram Singh v. Election Tribunal, Kotah and Anr.* It reads as under :

Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties, not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore, be guarded against (provided always that justice is done on both sides) lest the very means designed for the furtherance of justice be used to frustrate it. Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.

We feel that omission or lapse arising out of non-compliance with the Court's order was not of such a serious gravity as to close the door of the Court to the appellants by dismissing the appeal. A procedural step which facilitates hearing of the appeal cannot impede access to justice. And that is what has happened.

6. If the Court felt that the appellants were trying to delay the hearing of the appeal and that on account of this dilatory tactics the respondents-landlords who had obtained a decree would suffer, it was open to the High Court to direct the respondents to get the paper-books prepared and impose the cost of the same on the appellants. That was the easiest way to deal with the

situation and thwart the efforts of the appellants to delay the hearing of the appeal. We fail to see how the High Court by taking the step which it took has expedited the hearing of the appeal because from June 1979 the proceeding has reached October 1982 and pursuant to the order of this Court, would consume some more time before the appeal could be disposed of. If the other way the matter had been approached by now the appeal to this Court could have been finally disposed of.

7. It is not for a moment suggested that the Court cannot make an order directing the appellants to prepare the paper-books. A sanction could have been created by providing that if the paper-books are not supplied in time the interim stay of dispossession would be vacated. That would have imposed a serious obligation on the appellants to comply with the Court's order in time. If the respondents were very keen to get the appeal expeditiously disposed of, they could have been called upon to supply the paper-books and costs could have been imposed on the appellants. Instead of this permissible mode of achieving the end, the High Court has imposed a penalty which we find disproportionate to the gravity of the omission. Access to justice cannot be thwarted in this manner. Therefore, we are constrained to interfere in this matter.

6. After considering the assertions made in the application and considering the order dated 06.10.2016 passed by this Court as also decision of the Apex Court in **Kalipada Das @ Mohanto** (*supra*), I am satisfied that applicant has made out the case for condonation of delay and for restoration of C.R.A. Hence, delay of 72 days is condoned. Civil Application is allowed in terms of prayer clause (a) with no order as to costs. C.R.A. No.430 of 2016 is restored to the file.

7. List the C.R.A. for 'admission' on 26.03.2018.

Parties are put to notice that subject to the time constraint and convenience of the Court, C.R.A. will be disposed of finally on that date.

(R. G. KETKAR, J.)

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