

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1198 OF 2018

Diljahan Bashir Khan (decd) through LRs
A. Yusuf Bashir Khan and others ... Petitioners
Vs.
Sayyad Altaf Hussain and another ... Respondents

Mr. Amit B. Borkar for Petitioners.
Mr. Siddharth C. Wakankar for Respondents.

CORAM : R. G. KETKAR, J.
DATE : APRIL 5, 2018

P.C. :

Not on Board. At the request of Mr. Borkar, taken up in the production Board.

2. Heard Mr. Borkar, learned Counsel for the petitioners and Mr. Wakankar, learned Counsel for the respondents at length.

3. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the order dated 20.04.2017 passed by the learned District Judge, Pune below exhibit-33 in Miscellaneous Civil Appeal No.6 of 2010. By that order, the learned District Judge dismissed the application on the ground that no justification is made out for condoning the delay of 4 years and 11 months.

4. Rule. Mr. Wakankar waives service for respondents. Having regard to the narrow controversy raised in this Petition and at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing forthwith.

5. Respondents instituted Suit against Ms Diljahan Bashir Khan (for short 'original defendant') for recovery of possession invoking ground under Sections 13(1)(e) and 13(1)(g) of the Maharashtra Rent Control Act, 1999 (for short 'Act'). The Suit was decreed on 08.06.2009. Petitioners, hereinafter referred to as 'defendants', filed application under Order IX, Rule 13 of C.P.C. on 18.06.2009 for setting aside ex-parte decree. By order dated 05.12.2009, the learned trial Judge rejected the application. Aggrieved by that decision, original defendant preferred Miscellaneous Civil Appeal No.6 of 2010. Pending the Appeal, original defendant died on 17.06.2010. Application exhibit-21 was filed on 28.07.2010 for bringing her heirs and legal representatives on record. It appears that the said application was neither signed by the Advocate nor by legal representatives of the original defendant. In support of that application, affidavit dated 28.07.2010 at exhibit-22 was filed. Plaintiffs filed reply opposing that application. On 17.02.2011, Purshis was filed setting out therein that inadvertently, Advocate for the appellant M. S. More did not sign the application and without the permission of the Court, his junior Vijay K. Rathod signed the application. On 20.08.2015, application exhibit-33 was filed by legal representatives of the original defendant. In paragraph 4, it was contended that in view of the Purshis dated 17.02.2011 to the effect that Advocate Rathod inadvertently signed the application without permission of the Court, the Court directed Advocate for the appellant on 17.02.2011 to file fresh application on record without pressing application at exhibit-21. As per the direction of the Court, the Advocate for the appellant did not press applications exhibit - 21 and 25 on 18.06.2015 and 08.07.2015. By application exhibit-33, prayer was made for condoning the delay of 4 years, 11 months and 4 days in filing the application for bringing legal representatives of the original defendant on record. By the impugned order, the learned District Judge rejected the application.

6. Mr. Wakankar submits that plaintiffs are present in the Court. He has tendered photocopy of PAN Card of plaintiff No.1, which is taken on record and marked 'X' for identification. Mr. Wakankar identifies plaintiff No.2. Upon taking instructions from them, he submits that, by consent, the impugned order may be set aside.

7. In view thereof, by consent of the parties, Petition is disposed of in the following terms:

a. Application at exhibit-21 dated 28.07.2010 filed within 90 days from the death of the original defendant shall stand revived before the learned District Judge and the order dated 18.06.2015 is set aside. Advocate for the appellants and the legal representatives of the original defendant are permitted to sign the said application in the presence of the Presiding Officer;

b. The endorsement made by the petitioners “not pressing” shall also stand deleted;

c. In view thereof, application exhibit-33 does not survive and is accordingly disposed of and consequently, the impugned order dated 20.04.2017 stands dissolved;

d. The Appellate Court will now proceed on the footing that legal representatives of the original defendant are brought on record in Miscellaneous Civil Appeal No.6 of 2009 and will proceed with the matter on merits;

e. Having regard to the fact that Miscellaneous Civil Appeal No.6 of 2010 is pending since 2010, the learned District Judge is requested to decide the same within 3 months from the production of the authenticated copy of this order.

8. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)