

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REVIEW PETITION NO.10 OF 2018
IN
NOTICE OF MOTION NO.1838 OF 2017
IN
APPEAL (LODGING) NO.489 OF 2016
IN
SUIT NO.4142 OF 2000
WITH
NOTICE OF MOTION (LODING) NO.3622 OF 2016**

**Smt. Freny P Chowna : Review Petitioners/
(since deceased) & anr. Appellant Nos.1 and 2**

In the matter between

**Smt. Freny P Chowna : Petitioners/Appellant Nos.1 and 2
(since deceased) and anr.
Versus
Subhas Andrew Dias : Respondent/Original Plaintiff.**

**ALONG WITH
REVIEW PETITION NO.11 OF 2018
IN
NOTICE OF MOTION NO.1837 OF 2017
IN
APPEAL (LODGING) NO.491 OF 2016
IN
TESTAMENTARY PETITION NO.925 OF 2000
IN
SUIT NO.10 OF 2001
WITH
NOTICE OF MOTION (LODING) NO.3650 OF 2016**

**Smt. Freny P Chowna : Review Petitioners/
(since deceased) & anr. Appellant Nos.1 and 2**

In the matter between

**Smt. Freny P Chowna : Petitioners/Appellant Nos.1 and 2
(since deceased) and anr.
Versus
Subhas Andrew Dias : Respondent/Original Plaintiff.**

Mr. Jamshed B Dastoor a/w Mr. R N Bhagattjee for the Review Petitioners/Appellant Nos.1 and 2.

Mr. O S Kutty a/w Ms. Rajalakshmy Mohandas and Mr. Sanjay Palekar for the Respondent/Original Plaintiff.

**CORAM : R. M. SAVANT &
SARANG V KOTWAL, JJ.**

DATE : 06th SEPTEMBER 2018

P.C.

1 The above Review Petitions have been filed by the Original Applicants/Appellants in the Notices of Motion, for seeking review of the order dated 07/12/2017 passed in the Notices of Motion which were filed for condonation of delay of 792 days in filing the Appeals.

2 The said Notices of Motion as the order dated 07/12/2017 discloses have been dismissed on the ground that no sufficient cause has been shown for condonation of delay of 792 days in filing the said Appeals. Whilst arriving at the said conclusion, this Court has observed that between the period 03/02/2011 till 29/10/2014 no appearance was put up either by the Applicant/Appellant No.2 or her advocate before the Court Commissioner who was appointed for recording of evidence in the Suits in question as also before the learned Single Judge on 29/10/2014 when the learned Single Judge dismissed the said Suits.

3 The review is sought on the ground that there is an error apparent

on the face of the record inasmuch as what has weighed with this Court is the fact that no appearance was put up before the Court between 03/02/2011 till 29/10/2014 when the Caveat and the Administration Suit came to be dismissed. In so far as the said ground is concerned, the same is misconceived in view of the recording made in paragraph 5 of the said order wherein this Court has specifically recorded that there is absolutely no explanation for the non-appearance of the Caveator as well as their Advocate before the learned Single Judges as well as before the Court Commissioner for recording evidence up to 29/10/2014. Thereafter in paragraph 6 of the said order it has also been recorded that the Affidavit in Support filed in Notice of Motion No.1822 of 2016 also does not further the case of the Applicant/Appellant as regards non-appearance of the Caveators and their Advocate before the Court Commissioner right from 03/02/2011 till the Caveat and the Administration Suit came to be dismissed on 29/10/2014. In our view, therefore, there is no merit in the said contention of the learned counsel for the Review Petitioners that there is an error apparent on the face of the record.

4 The learned counsel appearing on behalf of the Review Petitioners thereafter sought to place reliance on the listing dates to contend that this Court has not taken into consideration the fact that the said Suits were never listed before the learned Single Judges of this Court before 29/10/2014 and therefore there was no occasion for the Caveators and their Advocate to appear

before the learned Single Judges of this Court. The said ground is also bereft of any merit, firstly because the said ground was never urged when the Notices of Motion for condonation of delay of the said 792 days were argued before us, and secondly what has weighed with this Court, as already been adverted to herein above viz. factum of the Caveators and their advocate not appearing before the Court Commissioner who was appointed to record the evidence between 03/02/2011 till 24/10/2014 when the learned Single Judge of this Court dismissed the Caveat and the Administration Suit.

5 It is also required to be noted that the Appeals in question challenging the orders passed by the learned Single Judges in respect of which the condonation of delay was sought were filed after a lapse of about 792 days of the dismissal of the Suits on 29/10/2014. The Chronology of Dates and Events has already been reproduced in the order dated 07/12/2017 of which review is sought. Hence having regard to the conduct of the Review Petitioners before dismissal of the suits and thereafter this Court has observed that the manner in which the proceedings were sought to be prosecuted by the Applicants/Appellants borders on indolence and negligence and therefore case for exercise of discretion has not been made out by the Applicants/Appellants.

6 For the reasons afore-stated we do not find any case for exercise of our review jurisdiction, as no ground which is available under Order 47 of the

Code of Civil Procedure has been made out by the Review Petitioners. The reliance placed by the learned counsel for the Review Petitioners on the judgments of the Apex Court reported in **AIR 1960 SC 1168** in the matter of **Kaushalya Devi and others v/s. Bachittar Singh and others** and, reported in **(2009) 12 SCC 398** in the matter of **Dharam Deo Narayan Singh v/s. State of Jharkhand and another**, in our view, in the facts and circumstances of the present case is misplaced. In **Kaushalya Devi's** case (supra) it was held by the Apex Court that a finding based on no evidence is an error of law apparent on the face of the record. In **Dharam Deo Narayan Singh's** case (supra) circular instruction and the other documents produced by the Appellant in the Review Petition were not taken into consideration by the High Court. The High Court rejected the Review Petition on the ground that there was no error apparent on the face of the record. In our view in the facts of the present case where admittedly the Review Petitioners had not appeared before the Court Commissioner on the dates fixed for recording of evidence, as also before the learned Single Judge on 29/10/2014 when the suits were listed, as also considering the fact that after the suits were dismissed the Appeals were filed after 792 days of the limitation getting over the said judgments (supra) would not further the case of the Review Petitioners in so far as the above Review Petitions are concerned. The above Review Petitions are accordingly dismissed.

Laxmikant
Gopal
Chandan

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]