

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAO) NO.2031/2018

IN

M.C.A. STAMP NO.26258/2018

IN

APPEAL AGAINST ORDER NO.5/2018

Shri Narendra Dharnidhar Gandhi

..Vs..

Pankajkumar S/o Prabhakar Kawale and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.D. Samel, Advocate for the respondent / applicants.
Shri R.R. Shrivastava, Advocate for the appellant.

CORAM : Z.A. HAQ, J.

DATE : 19.11.2018.

Heard Shri M.D. Samel, Advocate for the applicants (respondents in A.O. No.5/2018) and Shri R.R. Shrivastava, Advocate for the original appellant in A.O. No.5/2018.

By judgment dated 4th April, 2018 this Court allowed the A.O. No.5/2018 filed by the original plaintiff and granted prayers made by the plaintiff in the application (Exh. No.109) which was filed before the trial Court. This Court appointed senior officers of respondent no.3 - bank as receiver over the suit property and directed that they shall take action in consonance with the mortgage deed dated 27th December, 2013. This Court directed that the persons appointed as receiver should take symbolic possession of the suit

property and submit their report to the trial Court within eight weeks.

Civil Application No.60/2018 was filed in disposed A.O. No.5/2018 praying that police aid be granted to implement / execute the directions given by this Court by the judgment dated 4th April, 2018. By order dated 10th August 2018, Civil Application No.60/2018 was disposed granting liberty to the plaintiff to move appropriate application before the trial Court. The learned Advocates for the respective parties submit that accordingly an application was filed by the plaintiff before the trial Court and it was allowed on 10th September, 2018. This order passed by the trial Court on 10th September, 2018 was challenged by the defendant Nos.1 and 2 before this Court in Writ Petition No.6278/2018 which is dismissed on 25th October, 2018. After Writ Petition No.6278/2018 was dismissed, a request was made on behalf of the defendant Nos.1 and 2 that ten weeks' time be granted to approach the Hon'ble Supreme Court in the matter. This Court rejected the request made on behalf of the defendant Nos.1 and 2 observing that the defendant Nos.1 and 2 had not taken any steps to challenge the judgment passed by this Court on 4th April, 2018. After Writ Petition No.6278/2018 is dismissed and this Court refused to grant the request made on behalf of the defendant Nos.1 and 2, the defendant Nos.1 and 2 have filed review application on 14th November, 2018 and as there is delay in filing the review application, present

civil application is filed.

The facts on record show that there are no *bona fides* on the part of the respondent Nos.1 and 2 in pursuing the matter. There is no explanation why the application seeking review of the judgment dated 4th April, 2018 is not filed earlier within prescribed period and in any case simultaneously alongwith Writ Petition No.6278/2018. There is a consistent *mala fide* attempt on the part of the defendant Nos.1 and 2 to protract the matter. I am not oblivious of the legal position that the prayer for condonation of delay has to be considered liberally, however, the explanation given by the defendant Nos.1 and 2 is not sufficient to condone the delay of 192 days in filing the review application. Moreover, the conduct of the defendant Nos.1 and 2 is writ large on the record. After the matter travelled much further and the defendant Nos.1 and 2 have actively participated in the proceedings and opposed the claim of the plaintiff at every stage, the defendant Nos.1 and 2 have now filed the review application.

On merits of the matter, the defendant Nos.1 and 2 relied on the provisions of Order 40 Rule 1(2) of the Code of Civil Procedure and Section 53 of the Transfer of Property Act to urge that the Court has no power to remove any person from possession or custody of his property, at the behest of a person who is not having a right to seek removal of the other person from the suit property. The submission cannot be accepted. By the judgment dated 4th April, 2018 it is directed that

if there is any legal impediment in taking physical possession of the suit property, symbolic possession of the suit property should be taken by the Receiver. The learned Advocate for the defendant Nos.1 and 2 and the learned Advocate for the plaintiff admitted that the physical possession of the suit property is not taken from the defendant Nos.1 and 2 and only symbolic possession is taken.

In the above facts, as I am not satisfied that the defendant Nos.1 and 2 have been able to give proper explanation for the inordinate delay in filing the review application, the prayer made in the application is dismissed. Civil application is **dismissed** with costs quantified at Rs.30,000/- (Thirty Thousand) to be paid by the defendant Nos.1 and 2 to the plaintiff. The defendant Nos.1 and 2 shall pay the amount of costs to the plaintiff by demand draft and produce receipt of it on record of the trial Court till 15th December, 2018.

As Civil Application No.2031/2018 praying for condonation of delay in filing the review application is dismissed, the M.C.A. Stamp (Review) No.26258/2018 is also **rejected**.

JUDGE