

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

CIVIL REVISION APPLICATION NO. 665 OF 2016

Smt. Prabha Bhimashankar Birajdar ...Applicant

Versus

Gafarkhan S/o Hamidkhan Pathan & Anr. ...Respondents

Samir Kumbhkoni - Advocate for the applicant.
Ashok B. Tajane – Advocate for the respondent.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 4th OCTOBER 2019.

P.C. :

The respondent-landlord filed regular Civil Suit No. 546 of 2008. That was on 24.7.2008. He wanted the applicant-defendant evicted from the leased property. Then on 01.09.2009, the applicant filed the written statement. But, thereafter, he did not pursue the matter. Eventually, the trial Court decreed the Suit on 16.03.2012. In the course of time, the successful landlord laid execution and took out warrant of eviction. The bailiff visited the suit property on 30.08.2015, when the applicant was absent.

2. But soon the defendant came to know about the execution and the impending eviction. So on 9.9.2015, he

applied for the certified copies of the judgment and decree, secured them in two days, and eventually filed the appeal in the same month. But by that time, there was a delay of three years and five months.

3. To have the delay condoned, the applicant submitted two medical certificates, besides pleading that she had been afflicted with paralyses and completely bedridden. Despite the applicant's plea of illness, the Appellate Bench of the Small Cause Court was unconvinced and, then, refused to condone the delay. Aggrieved, the applicant has filed this Civil Revision Application.

4. Indeed the applicant's counsel has advanced two-fold argument. First, he has contended that the applicant suffered a paralysis stroke on 27.7.2008 and remained completely bedridden. Second, he has submitted that her counsel has never informed about the progress of the case. Only when the bailiff came with the warrant of execution did she come to know about the decree. Thereafter, she acted diligently: she applied for the certified copies of the judgment and the decree and filed the appeal immediately. Therefore, he wants the Court to condone the delay and permit the applicant to contest the case on merits.

5. On the other hand, the respondents' counsel has submitted that the trial Court has examined the issue in detail and assigned reasons why the excuse of illness was disbelieved. According to him, even otherwise, the delay is inordinate and that cannot defeat the respondent's substantial rights accrued

because of the applicant's conduct of gross negligence.

6. Heard Shri Samir Kumbhkoni, the learned counsel for the applicant, and Shri Ashok B. Tajane, the learned counsel for the respondent.

7. To begin with, the applicant has pleaded that she has been afflicted with paralysis and was bed ridden. That naturally strikes a sympathetic chord with the court. So I have examined the case closely to see whether the applicant could be given a chance to redeem herself by contesting the case on the merits.

8. As seen from the record, the respondents filed the suit on 24th July 2008. According to the applicant, she suffered a paralytic stroke on 27th July 2008—on the very third day. Despite that, more than a year later, she could file her written statement. That was on 1st September 2009. But, thereafter, the applicant simply abandoned the case. Apparently, before the trial Court she had the assistance of a counsel and that counsel seems to have taken numerous adjournments. Otherwise, an *ex-parte* suit would not have dragged on for four years. Put differently, the uncontested suit could be decreed only on 16th March 2012. Then, for over three years, nothing significant has happened.

9. Eventually, on 30th August 2015, the bailiff came to the suit property with a warrant of eviction; that stirred the applicant into action.

10. Now, let us examine the reasons why the Appellate Bench has refused to condone the delay. I note that the applicant produced two medical certificates. The first certificate shows

that the applicant had been hospitalized from 22.01.2008 to 28.01.2008. That was less than a week. Besides that, the Appellate Bench has noticed the doctor's endorsement that the applicant was able to do her routine work from 31.08.2009. I wonder if it had been a case of severe paralysis, it is impossible for the afflicted person to be up and moving in less than a week. It should amount to a miracle. Then, the second certificate is from 23.02.2015 to 25.02.2015—that is much beyond the date of decree. Under these circumstances, the Appellate Benches has disbelieved the medical certificates.

11. I have gone through the record, especially the reasons the applicant assigned for her absence and the delay. I have also gone through the reasons the Appellant Bench has assigned for its refusing to condone the delay. I fail to find any just ground to interfere with the Appellate Bench's discretion in refusing to condone the delay. The delay, indeed, is inordinate: three years and five months. The record reveals that after her filing the written statement on 01.09.2009, she abandoned the case—for over six years. Later, faced with inevitable eviction, she has come up with excuse of illness, which, I reckon, the Appellate Bench has rightly disbelieved.

I, therefore, see no merits in the Civil Revision Application. So I dismiss it. No order on costs.

[DAMA SESHADRI NAIDU, J.]