

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.148/2016

Naresh Govind Vaze

... Petitioner

V/s.

Rajesh G. Ketkar & Ors.

... Respondents

Mr. Naresh V. Vaze Petitioner in person.

CORAM: K.K. TATED, J.

DATED : JANUARY 10, 2019

P.C. :

1 Heard the Petitioner in person. By this petition, the Petitioner in person submits that contempt proceedings be initiated against Respondent No.1, for not considering all the authorities cited by him at the time of passing the order dated 30.06.2015 in Civil Revision Application No.154/2015.

2 In the present proceedings, initially the Petitioner in person had filed Civil Revision Application No.154/2015 before this court u/s.115 of the Code of Civil Procedure, 1908 challenging the impugned order dated 25.11.2014 passed by the learned Civil Judge, Junior Division, Vasai below Exhibit Nos. 10 and 12 in Regular Civil Suit No. 38/2014. At the time of hearing of the Civil Revision Application the Petitioner in person had tendered some authorities. Bare reading of order dated 30.06.2015 shows that Respondent No.1 has considered the authorities and dismissed

the Petitioner's Civil Revision Application. Instead of filing appropriate proceedings in the higher forum, the Petitioner has filed the present contempt petition to take action against Respondent No.1 under the Contempt of Courts Act.

3 The Petitioner in person submits that at the time of arguing the Civil Revision Application, he had cited the authorities of the Higher Court before Respondent No.1. He submits that instead of considering those authorities, Respondent No.1 passed the order dated 30.06.2015 and dismissed his matter. He submits that for non consideration of the authorities cited at the time of hearing itself amounts to contempt of court. He submits that the Petitioner has good chance of success in the present proceedings. Hence, this Hon'ble Court to issue show cause notice to the Respondents calling upon them, as to why, action should not be taken against them as per the contempt of courts Act.

4 In support of his contention, Petitioner party in person has placed reliance on the judgment of the Apex Court in the matter of *Zafar Ali s/o. Late Akbar Ali & Ors. Vs. Smt. Shamim Akhtar w/o. Akbar Saheb 2009(6) Mh.L.J. 204*. Bare reading of this authority shows that it is not applicable to the facts and circumstances of the present case. In this authority, the issue was about condonation of delay u/s.5 of the Limitation Act.

5 In addition to above authority, the Petitioner in person has filed the judgments of the Apex Court in the matter of *Urban*

Improvement Trust Vs. Poonam Chand AIR 1997 Rajasthan 134 and Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh 2014(9) SCC 78.

Though the Petitioner in person has tendered photo copies of both the aforesaid authorities, he has not argued the same. In any case, I have gone through both the authorities, however, same are not applicable in the facts and circumstances of the case. In the matter of **Urban Improvement Trust (supra)** the issue was about the condonation of delay under section 5 of the Limitation Act. Similarly, in the matter of **Hindustan Petroleum Corporation Ltd. (supra)** the issue was about eviction from the suit premises. Therefore, both these authorities are not applicable in the case in hand.

6 After hearing the Petitioner in person at length, this court asked him, as to whether he wants to challenge the order dated 30.06.2015 in the Higher Forum or to proceed with the matter. He submits that he wants to press the Contempt Petition only.

7 It is to be noted that in the present proceedings the Respondent No.1, after considering the facts and the authorities cited by the Petitioner, passed the order dated 30.06.2015 and dismissing the Petitioner's Civil Revision Application on its own merits. Paragraph 5 of the said order reads thus:

“5. He submitted that Section 2(j) of the Act defines the expression “period of limitation” to mean the period of limitation prescribed for any suit, appeal or application by the Schedule, and “prescribed period” to mean the period of limitation computed in accordance

with the provisions of the Act. He submitted that in terms of Article 120 of the Act, period of 90 days is provided for filing the application and thereafter 2 months for setting aside the abatement. In other words, period of limitation for setting aside abatement and for bringing heir and legal representative of deceased on record is 150 days. Here, in the present case, there is delay of 3 months and 10 days. He submitted that delay cannot be condoned mechanically and while considering the application for condonation of delay, the Court has to consider over all merits of the case. In support of his submission, he relied upon the following decisions.

i) Urban Improvement Trust Vs. Poonam Chand, AIR 1997 Rajasthan 134 to contend that Courts are required to have a glance on merits of the proceedings.

ii) Union of India Vs. Lachhman Dass Sain Ditta Mall, AIR 2002 Himachal Pradesh 50 in particular paragraph 26 thereof, to contend that while considering the applications for condonation of delay and deciding them, the approach of the Court is to decide the matter on merits and to do substantial justice between the parties. Merits cannot be ignored or overlooked altogether.

iii) Zafar Ali Vs. Shamim Akhatar, 2009(6)Mh.L.J. 204 to contend that while considering prayer for condonation of delay, it does not mean that merit of the main appeal /case cannot be looked into. In other words, while considering the application for condonation of delay, the Court has to consider merit of the appeal or case.

iv) Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh, (2014) 9 Supreme Court Cases 78 to contend that powers of revisional Court are confined to find out whether or not a finding of the fact recorded by the subordinate Court or Tribunal is according to law. The said aspect is required to be seen on the touchstone

whether such finding of fact is based on some legal evidence or it suffers from any illegality like misreading of the evidence or overlooking and ignoring the material evidence altogether or suffers from perversity.”

8 It is clear from paragraph 5 of the order dated 30.06.2015 that Respondent No.1, at the time of passing the order considered the authorities cited by the Petitioner. It is to be noted that the Petitioner has an alternate efficacious remedy available to challenge the order dated 30.06.2015 in Civil Revision Application, if he is aggrieved by the same.

9 Considering these facts, I am of the opinion that the Petitioner in person has failed to make out any case to entertain the Contempt Petition. Hence, the following order is passed:

- a. The Contempt Petition stands dismissed with costs.
- b. The contempt Petitioner to pay cost of Rs.10,000/-.
- c. Cost shall be paid in the Registry of this court on or before 20.02.2019.
- d. If cost is not deposited and a receipt thereof is not produced in the Registry of this court within stipulated time as stated hereinabove, Registry is directed to send a copy of this order to the concerned Collector to recover the said cost from the Petitioner in person, as land revenue under the Maharashtra Land Revenue Code, 1966.

10 At this stage, the Petitioner in person seeks stay of this order for a period of three months. Considering the fact that this court has granted time to the Petitioner to pay the cost till 20.02.2019, there is no question of granting any stay. Hence, the oral request made by the Petitioner in person is rejected.

(K. K. TATED, J.)