

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.256 OF 2018

Bhagwan Krishna Thite

...Applicant

vs.

Krushna Ramling Thite

(Through legal heirs and Ors.)

...Respondents

Mr. Milind Prabure I/b. Mr. S.S. Aradhye, for the Applicant

Mr. P.R. Suryawanshi I/b. Mr. G.M. Savagave, for Respondent No. 3.

CORAM : M. S. SONAK, J.

DATE : APRIL 11, 2019

JUDGMENT:

. Heard learned counsel for the parties.

2. Rule. With consent of and at the request of learned counsel for the parties rule is made returnable forthwith.

3. The challenge in this Revision Application is to the order dated 22nd September, 2015. The operative portion of this order read thus:

“Heard. It open that on 21.01.2015 conditional order was passed subject to deposit of costs within seven days. Application has not complied said order within time limit. The order now costs cannot be accepted. Hence, application is

rejected.”

4. The conditional order dated 21st January, 2015 has required the Applicant to pay costs within seven days. The Applicant filed the application belatedly that the costs could not be paid on account of financial difficulties and ill health. This application was filed after almost eight months of the order. The impugned order dated 22nd September, 2015 dismissed this application.

5. The learned counsel for the Applicant submits that the financial position of the Applicant was really not sound and there was health issues of the Applicant. He submits that the application made by the Applicant for restoration, had, in fact, been allowed. He submits that one more chance may be granted to the Applicant.

6. Mr. P.R. Suryawanshi, learned counsel for the Respondents opposes this Application by pointing out that the Applicant has been grossly negligent in the matter. He points out that there was delay of twelve years and the same was condoned subject to payment of costs of Rs. 6,000/-. Despite, the Applicant failed to

pay the costs and apply for extension eight months thereafter.

7. According to me, in the facts of the present case, one more final opportunity can be granted to the Applicant. This is because the Applicant cannot be said to have gained anything by non payment of the costs. At the relevant time, it appears that there may have been serious financial difficulties and health issues. However, this shall be subject to the Applicant's paying costs of Rs. 15,000/-. Such costs are required to be awarded for no fault of the Respondents as they are also being made to pursue the litigation for all these years.

8. Accordingly, this Revision Application is disposed of with the following order:-

(a) The impugned order dated 22nd September, 2015 is set aside subject to payment of costs of Rs. 15,000/- within a period of four weeks from today.

(b) If the costs of Rs. 15,000/- are paid to the Respondents or deposited before the trial Court within four weeks from today, simultaneous with such deposit, liberty is granted to deposit costs of Rs. 6,000/- before the trial Court in terms of order dated 21st

January, 2015.

(c) If costs as aforesaid are indeed paid, then the order dated 21st January, 2015 shall operate and the suit stand restored.

(d) However, if there is again default in payment of total amount of Rs. 21,000/- within a period of four weeks from today, then, even Civil Revision Application shall be deemed to have been dismissed without further reference to this Court.

9. Rule is made absolute in the aforesaid terms.

10. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)