

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL REVISION APPLICATION NO. 283 OF 2014**

Unknown legal heirs of Tatyaba Ramchandra      ...Applicants  
Kanse His legal heirs and successors and  
1.Smt. Sunita Subhash Kanse and ors.

*Versus*

M/s. Pyramid Corporation      ...Respondent

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Mr.Sameer M. Tendulkar a/w. Mr. Suraj Gupte & Ms.Sunita Kande for  
the applicant.

Mr. Shailendra Singh a/w Mr. Prakash Kapadia for the respondent.

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**CORAM : DAMA SESHADRI NAIDU, J.**

**DATE : 14<sup>th</sup> AUGUST 2019.**

**P.C. :**

The plaintiff-landlord filed a suit for eviction, that is R.A.E. & R. No.1445/2123 of 2006, against “unknown legal heirs” of the deceased original tenant. He secured an *ex parte* decree. Later, he took out execution proceedings. In response to the notice in those execution proceedings, applicant no.1 contested the eviction and informed the executing court that the deceased tenant is survived by his legal heirs.

2. Later, all the eight legal representatives of the deceased tenant filed Appeal/ST/4763 of 13 before the Appellate Bench of the Small Cause Court, Mumbai. In that appeal, they presented Marji Application No.833 of 2013, for they perceived a delay of about two years in their filing the appeal. So they wanted the Appellate Bench to condone the delay.

3. Through order, dated 4<sup>th</sup> March 2014, the Appellate Bench of Small Cause Court, Mumbai, dismissed the Marji Application. Assailing that order, the applicants have filed this Civil Revision Application. The counsel on either side have initially advanced their arguments on the issue before the Court. Now, in the presence of the parties, today they have filed consent terms.

4. Both the learned counsel agree that this Court may set aside the impugned order and also the very decree itself, and remand the matter to the trial Court. That done, the plaintiffs want to amend the suit, bring the legal heirs, that is applicants here, and invite a judgment on merits. The applicants, too, have agreed for this proposal. In this context, I have felt that the scope of Civil Revision Application is very limited. Here the challenge lies only against the order, dated 4<sup>th</sup> March 2014, in Mergi Application No.833 of 2013 passed by the

Appellate Bench, Small Cause Court, Mumbai. And that concerns delay in the applicants' filing the appeal. The appeal is yet to be numbered.

5. But, now, the parties have consented to have the very decree aside, so that the matter could be remanded and adjudicated on merits. When I sought the assistance of Shri. V.Y. Sanglikar, a learned senior member of the Bar, he has readily informed me that the parties can at any stage of the proceedings compromise the matter or agree to certain consented terms. And those terms of compromise or consent can always travel beyond the issue immediately before the Court.

6. I place on record my appreciation for the assistance rendered by Shri Sanglikar, the learned advocate.

7. The consent terms are taken on record and marked as "x" for identification.

8. Given the consent terms entered into by both the parties, I dispose of this Civil Revision Application. As a result, in tune with the consent terms, I set aside trial Court's decree, dated 2<sup>nd</sup> June 2009, and remand the matter to it for fresh adjudication.

9. It is open for the plaintiff-respondents to amend the plaint suitably, bring the applicants on records as defendants, and then

proceed with the matter. Because of the delay that has already occurred, as the respondents counsel pleads, the trial Court may make all efforts to dispose of the suit expeditiously.

**[DAMA SESHADRI NAIDU, J.]**