

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

CIVIL APPLICATION NO. 1355 OF 2019

IN

WRIT PETITION NO. 14212 OF 2018

Mr. Gurmeet Singh Gill ...Applicant

Versus

Mr. Verinder Singh Bharana & Ors. ...Respondents

Ashutosh C. Gavnekar i/b Neelam Morey - Advocate for
the applicant.

Abhishek Patil - Advocate for the Respondent No. 1 & 2.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 17th JUNE 2019.

P.C. :

The applicant-tenant, 26.09.2018, suffered an order of eviction from the Additional Commissioner. Later, he filed an appeal before the Competent Authority. In that appeal, he sought leave to defend. But the Competent Authority has rejected the applicant's request. It was on the grounds of limitation.

2. Aggrieved, the applicant filed Civil Writ Petition No. 14212 of 2018. This Court, through its order dated 20.12.2018, granted the leave subject to a few conditions, a couple of which are extracted:

“The petitioner shall deposit before competent authority sum of Rs. 1,00,000/- per month to be payable on or before 5th of each month as compensation till the final disposal of the Application before the Competent Authority.

In the event of any of the defaults above, the orders of the Competent Authority dated 22nd May, 2018 and the order of the Additional Commissioner dated 26th September 2018 shall stand restored without any further orders and the order setting aside the above referred orders in the present Writ Petition shall stand vacated. The Execution Application filed by Respondent Nos. 1 and 2 before the Competent Authority be executed forthwith.”
(Italian supplied)

3. Indeed, the applicant deposited Rs. 14,00,000/- as directed and, later, paid the monthly deposit of Rs. 1,00,000/-. But that monthly deposit was paid only for January and February. After that, he defaulted. In that background, when the competent authority refused to consider the applicant's appeal, he has filed this Civil Application.

4. Shri Ashutosh Gavnekar, the applicant's counsel, has pleaded with the Court that only because of certain unavoidable circumstances, besides his impecunious conditions, did the applicant fail to pay the amount on time in March. According to him, when the applicant approached the authority beyond 10th of that month, the authority refused to receive the deposit. It was on the grounds that the deposit was beyond the date fixed by this Court.

5. According to Shri Gavnekar, the Competent Authority was unavailable in April, May, and June—that is, till recently. So the applicant could not pay for those months, too. Therefore, now the applicant wants this Court's indulgence once more: the applicant wants to pay the accrued arrears for March, April, May, and June and, then, proceed with the appeal.

6. On the other hand, Shri Abhishek Patil, the learned counsel for the respondent-landlord, has opposed the applicant's claim, with equal vehemence. According to him, the applicant has no justification to

move this Court at the eleventh hour, when the landlord is all set to execute the decree he obtained on merits. He has disputed the applicant's statement that the Competent Authority was not in session in the last three months. In the end, Shri Patil asserts that the applicant has willfully defaulted and, thus, violated this Court's conditions. Therefore, he urges this Court not to entertain the applicant's request for any extension of time.

7. Heard Ashutosh Gavnekar, the learned counsel for the applicant, and Abhishek Patil, the learned counsel for the respondent.

8. As the record reveals, this Court did pass a conditional order on 20.12.2018. Substantially, the applicant complied with the condition, that is, depositing Rs.14,00,000/-. Thereafter, he had to deposit every month Rs.1,00,000/-. Admittedly, he has not done so—in the last four months.

9. First, after having the conditional order, the applicant approached this Court and had the date of deposit enlarged from 5th to 10th of every month. He paid for two months. After that, he defaulted. The applicant's assertion that the Competent Authority had not been in session in the last three or four months stands refuted because the respondent's counsel produced before me what seem to be the proceedings of the Competent Authority. They relate to other cases during those months.

10. I need not go into the nitty-gritty of whether the Competent Authority had been in session in those months. At any rate, the extracted portion of this Court's conditional order is self-operating. The moment the applicant has defaulted, the respondent's decree sprang into life. As the language of the order is unambiguous and the Court's intention clear, I decline to undo the consequences of the conditional order. I have found no justifiable circumstances to show indulgence one more time. Accordingly, I dismiss the

Civil application as merit less.

[DAMA SESHADRI NAIDU, J.]