

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION STAMP NO. 16965 OF 2019

Smt.Subedaulat Liyakat Sayyed	.. Applicant
Vs.	
Smt.Azra Niyaz Siddique and anr.	.. Respondents

Mr.Gaurav Parkar, for the Applicant.
Mr.Vaibhav A.Sugdare,for Respondents No.1 & 2.

CORAM : M.S.KARNIK, J.

DATE : 03rd OCTOBER, 2019

P.C. :

. Heard learned Counsel.

2. The petitioner is the original plaintiff. The petitioner is challenging the order dated 17/04/2018 passed by the trial Court in an application made by original defendants below Exhibit 28/B under Order IX Rule 13 of Code of Civil Procedure, 1908 (for short 'CPC') for condonation of delay. The plaintiff filed the Suit for specific performance. As the defendants did

not appear, the trial Court proceeded to decree the Suit exparte by judgment and decree dated 10/02/2010.

3. The defendants thereafter filed an application under Order 9 Rule 13 of CPC for setting aside exparte judgment and decree. The application was filed on 07/01/2011. It is stated that there is delay of 304 days in filing the application. A separate application for condonation of delay was filed. The trial Court allowed the application subject to payment of cost of Rs.30,000/-.

4. Learned Counsel for the petitioner would submit that the trial Court was not justified in allowing the application. According to him, the delay is not explained properly. He would invite my attention to the order passed by the trial Court and the reasons stated therein. He would submit that only reason mentioned in the application is that Advocate for the defendants has been negligent in prosecuting the Suit. According to him, this cannot be a sufficient reason to condone the delay and set

aside the exparte decree. In any case, he would submit that cost imposed by the trial Court is very less considering the manner in which defendants are prosecuting the matter.

5. Heard learned Counsel. I see no reason to interfere with the order passed by the trial Court setting exparte decree. The trial Court accepted the reason stated by the defendant that they had relied upon their Advocate to inform them about progress of the matter. The trial Court was of the opinion that the defendants cannot be made to suffer for the fault of their Advocate. Having gone through the order, I see no reason to interfere with the discretion exercised by the trial Court in allowing the application. According to me in the facts of the present case, cost imposed by the trial Court needs to be enhanced. Learned Counsel for the respondent on instructions states that cost of Rs. 30,000/- imposed by the trial Court has already been paid. He however submits that he would abide by the order passed by this Court so far as payment of enhanced cost. Though I am not inclined to interfere with the order

passed by the trial Court, however, cost is enhanced to Rs.50,000/-. The balance cost of Rs.20,000/- be paid by defendants to the plaintiff within a period of 2 weeks from today.

6. It is made clear that the defendants shall co-operate with the trial Court in expeditious disposal of the Suit and defendants will not seek unnecessary adjournments. The trial Court is requested to expedite hearing of the Suit. Needless to mention that if an application for injunction is moved by the plaintiff, the same shall be considered by the trial Court on its own merits and in accordance with law.

7. Subject to what is stated above, Petition is dismissed.

(M.S.KARNIK, J.)

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