

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL APPLICATION NO.1620 OF 2019
IN
REJECTED CASE NO.1297 OF 2016
IN
WRIT PETITION [STAMP] NO.8737 OF 2015**

Alpana Sanjay Kolhatkar and others.	]	Applicants
Vs.		
Vijay Kumar Gone and another.	]	Respondents

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Mr. Rajiv Chavan, Senior Advocate i/b Priyanka Chavan, Advocate for the Applicants.

Dr. Suneet Gupta, Advocate for the Respondents.

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CORAM : R.G. KETKAR, J.

DATE : 8th AUGUST, 2019.

P.C.

Heard Mr. Chavan, learned Senior Counsel for the applicants and Dr. Gupta, learned Counsel for the respondents, at length.

2. By this application, applicants have prayed for condonation of delay of 3 years and 65 days caused in filing this Civil Application and for setting aside the order dated 1st March, 2016 passed by the Registrar (Judicial-I), thereby, restoring Writ Petition [Stamp] No.8737 of 2015 to its original position on the file of this Court.

3. The applicants have instituted the above Writ Petition in this Court on 26th March, 2015 challenging the order dated 7th October, 2014 passed by the Additional Commissioner, Konkan Division, Mumbai (for short 'Commissioner') in Revision No.275 of 2014 . By that order, the Commissioner had set aside the order dated 31st May, 2014 passed by the Competent Authority, Konkan Division, Mumbai (for short 'Competent Authority') in Case No.96 of 2012 and remitted the case to the Competent Authority for fresh disposal by permitting the parties to adduce oral and documentary evidence. The applicants had instituted proceedings under section 24 of the Maharashtra Rent Control Act, 1999 for recovery of possession of 'Pent House' No.504 on the 5th floor, having 1400 square feet super built up and 980 square feet carpet area situate at Plot No.47 which further includes 5th floor level, 6th floor level and top terrace as per the plan attached to the sale deed, total all inclusive of (Flat and Terrace) aggregating 1850 square feet super built up area along with stilt parking space No.4 at Dilbahar Co-operative Housing Society Ltd, Plot No.47, Sector 29, Vashi, Navi Mumbai 400 703 (for short 'suit premises').

4. By order dated 31st May, 2014, the Competent Authority allowed the application made by the applicants under section 24 of the Act and directed the respondents to hand over vacant and peaceful possession of the suit premises, among other directions. Aggrieved by that decision, the respondents filed Revision Application under section 44 of the Act before the Commissioner. By order dated 31st May, 2014, the Commissioner remitted the case to the Competent Authority. During pendency of

the above Petition, by order dated 20th July, 2015, the Competent Authority dismissed Case No.96 of 2012 in default for non prosecution.

5. It is the case of the applicants that they acquired knowledge of dismissal on 30th October, 2015 and made application immediately on the same day for restoration and setting aside the order of dismissal. The applicants contended that by order dated 1st March, 2016, Registrar (Judicial -I) gave 4 weeks time i.e up to 30th March, 2016 for removal of office objections, failing which registration of Writ Petition Stamp was to stand dismissed. In view of the dismissal of the application by the Competent Authority, the applicants contended that the above Petition became infructuous. The applicants, therefore, did not take steps for restoration of the above Writ Petition.

6. The applicants took steps for restoration of Case No.96 of 2012 by taking out application on 30th October, 2015 before the Competent Authority for restoration of the said application after setting aside the order dated 20th July, 2015. The Competent Authority did not entertain the said application. As the application was not decided by the Competent Authority till June, 2016, the applicants preferred Writ Petition No.10701 of 2016 in this Court challenging the order dated 20th July, 2015. By order dated 16th March, 2017, this Court directed the Competent Authority to pass appropriate order on the application for restoration, if not already decided. The applicants filed application dated 3rd April, 2017 before the Competent Authority

for taking into consideration the earlier application dated 30th October, 2015 for restoration of Case No.96 of 2012 and for setting aside the order dated 20th July, 2015. By order dated 10th January, 2018, the Competent Authority rejected the applications dated 30th October, 2015 and 3rd April, 2017 with liberty to the applicants to take out appropriate application in proper format. The applicants, therefore, filed application on 26th April, 2018 in proper formant for condoning the delay as also for restoration of Case No.96 of 2012. By order dated 22nd October, 2018, the Competent Authority rejected the application for condonation of delay. Aggrieved by orders dated 20th July, 2015 and 22nd October, 2018, the applicants instituted Writ Petition No.3688 of 2019. By order dated 3rd May, 2019, the Petition was allowed by setting aside the orders dated 20th July, 2015 and 22nd October, 2018 passed by the Competent Authority, thereby restoring Case No.96 of 2012 to its original position. As the application was restored in pursuance of order dated 3rd May, 2019, the applicants have now taken out present application on or about 3rd July, 2019 for setting aside the order dated 1st March, 2016, thereby, restoring the above Petition. It is contended that cause of action for filing above Civil Application accrued only after the order was passed by this Court on 3rd May, 2019 in Writ Petition No.3688 of 2019. The applicants have, therefore, prayed for condoning the delay of 3 years and 65 days caused in filing the application and for setting aside the order dated 1st March, 2016.

7. In support of this application, Mr. Chavan has invited my attention to the only objection raised by the office in the main

Petition. The said objection is to the following effect;

“Documents not submitted in volume (Volume No.1 to 139) (Volume 140 to 290)”.

He submitted that objection raised by the Office is of trivial nature. He, therefore, submitted that application may be allowed in terms of prayer clauses (a) and (b).

8. On the other hand, Dr. Gupta strenuously opposed the application. He has tendered interim submission dated 8th August, 2019 opposing the application. The respondents have sought time for taking search of the case records pertaining to the Writ Petition and filing detailed reply to the application. The respondents have also prayed for hearing of this application along with related matters including Review Petition (Stamp) No.22555 of 2019 taken out in Writ Petition No.3688 of 2019.

9. Dr. Gupta once again requested for time on the ground that the respondents want to take inspection of the record. After taking inspection, they will file detail reply in answer to the above application.

10. Dr. Gupta further submitted that Rule 3 (iii) of Chapter V of the Bombay High Court Appellate Side Rules, 1960 lays down that all the office objections shall be removed within 14 days of their notifications, failing which registration of the Petition shall be refused. Rule-5 thereof lays down that objections may additionally be removed within the limitation period of the original Writ Petition. In the present case, the Petition itself was

instituted more than six months after the order passed by the Commissioner in Revision Application. The Petition itself was, therefore, liable for dismissal immediately after 22nd May, 2015 i.e after expiry of additional period as laid down in Rule-5.

11. Dr. Gupta relied on Rule-6 which lays down that the application for revision of order of the Registrar refusing registration has to be filed within 7 days from passing of the order with an affidavit showing cause as to why objections could not be removed within the prescribed time. The present application is filed on 3rd July, 2019 i.e after 3 years and 124 days after the order of dismissal. The applicants have not filed any affidavit explaining the circumstances under which objections could not be removed by them. In the present case, no sufficient cause is made out for condoning delay of 3 years and 124 days.

12. Dr. Gupta further submitted that the applicants have accepted that on account of failure to remove office objections, Petition became infructuous. In view thereof, they cannot seek revival of the Writ Petition. He submitted that in case, the Writ Petition is restored, the respondents will suffer severe prejudice and will be left without any defence in Case No.96 of 2012. He submitted that the applicants are abusing process of law and actually attempting to game judicial process and take this Court for a ride. The applicants have instituted multiple proceedings in respect of the same matter and have separately sought condonation of huge periods of delay in all these proceedings, without providing any cogent cause for the delay and severely

prejudicing the rights that have flowed to the respondents, as a consequence of such delay by the applicants/petitioners. He further submitted that conduct of the applicants disentitle them from any discretionary relief.

13. Dr. Gupta invited my attention to filing of the Petition in this Court on 26th March, 2015 challenging the order dated 7th October, 2014 passed by the Additional Commissioner, Konkan Division. Office objections were raised on 22nd April, 2015. Conditional order was passed on 1st March, 2016. However, the applicants did not remove office objections. He invited my attention to paragraph 19 of the Writ Petition wherein the the applicants alleged that they had no intimation of order impugned in the Petition. After acquiring knowledge about the same, they have instituted the Petition. This statement is falsified from perusal of the impugned order. The applicants had applied for certified copy on 8th October, 2014 and the same was given to them on 8th October, 2014. Thus, the contention raised in paragraph 19 is patently false. For all these reasons, he submitted that the application deserves to be dismissed.

14. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, the Competent Authority allowed the application made by the applicants under section 24 of the Act on 31st May, 2014. Aggrieved by this decision, the respondents preferred Revision Application under section 44 of the Act before the Commissioner. By order dated 7th October,

2014 the Commissioner remitted the case to the Competent Authority. During pendency of the above Petition, Case No.96 of 2012 preferred by the applicants was dismissed in default by order dated 20th July, 2015 passed by the Competent Authority. On 30th October, 2015, the applicants filed application for setting aside order dated 20th July, 2015 and for restoration of Case No.96 of 2012. In the meantime, on 22nd April, 2015, Office raised objections which I have already quoted in the earlier part of the order. On 1st March, 2016, conditional order was passed by Registrar (Judicial-I) giving 4 weeks time i.e 30th March, 2016 for removal of office objections, failing which registration of Writ Petition Stamp was to stand dismissed.

15. The Competent Authority did not decide the application made for restoration till June, 2016. The Applicants preferred Writ Petition No.10701 of 2016 in this Court challenging the order dated 20th July, 2015. By order dated 16th March, 2017, this Court directed the Competent Authority to pass appropriate order on the application for restoration, if already not decided. The applicants filed application dated 3rd April, 2017 before the Competent Authority for deciding application dated 30th October, 2015 for restoration of Case No.96 of 2012 and for setting aside the order dated 20th July, 2015. By order dated 10th January, 2018, the Competent Authority rejected both the applications with liberty to the applicants to take out appropriate application in proper format. Accordingly, the applicants filed application on 26th April, 2018 for condoning delay as also for restoration of Case No.96 of 2012. By order dated 22nd October,

2018, the Competent Authority rejected the application for condoning delay.

16. Aggrieved by orders dated 20th July, 2015 and 22nd October, 2018, the applicants instituted Writ Petition No.3688 of 2015. By order dated 3rd May, 2019, the Petition was allowed. The orders dated 20th July, 2015 and 22nd October, 2018 passed by the Competent Authority were set aside. Case No.96 of 2012 was restored to its original position. Thus, the cause of action accrued for filing the present application only after passing of the order by this Court on 3rd May, 2019 in Writ Petition No.3688 of 2019. Unless and until, order dated 20th July, 2015 was set aside and Case No.96 of 2012 is restored to its original position, the applicants could not have filed application for restoration of Writ Petition [Stamp] No.8737 of 2015. That would have been exercise in futility.

17. I have also referred to the objection raised by the Registry. A perusal of the objection raised by the Office shows that it is trivial in nature. A reference can usefully be made to the decision in **Kalipada Das Vs. Bimal Krishna Sen Gupta (dead) by L Rs., AIR 1983 Supreme Court, 876**. In that case, the appellants preferred appeal against the order dated 29th June, 1979 passed by the Division Bench of Calcutta High Court dismissing their appeal on the ground that the appellants failed to comply with the order dated 19th January, 1979, by which the appellants were directed to prepare the paper books out of Court and to supply six typewritten or printed copies thereof within two

months of the service of the notice of arrival of records upon the learned advocate for the appellants. By order dated 29th June, 1979, Division Bench of Calcutta High Court dismissed the appeal preferred by the appellants. In paragraph 5, the Apex Court observed thus;

“5. The only question is whether the appellant-tenants who undoubtedly failed to comply with the Court's order to supply the paper-books within the prescribed time should be visited with such serious consequences of a penal nature as described by the High Court itself. Supplying paper-books is a procedural requirement devised to facilitate rendering justice. In other words, it is a procedural step in aid of justice, and not substantive justice itself. Undoubtedly, Court's orders have to be obeyed. The institution of judiciary may not be able to function if there is no sanction behind the Court's order. But penalty of failure to comply with Court's order providing a procedural stage in aid of justice must be commensurate with the gravity of the lapse. If the penalty imposed is disproportionate to the gravity of the lapse or omission, the procedural stage instead of becoming a step in aid of justice would be a roadblock to justice and at this stage it would be advantageous to recall what this Court said in *Sangram Singh V. Election Tribunal, Kotah*, (1955) 2 SCR 1 at p. 28 : (AIR 1955 SC 425 at p.429) It reads as under:

“Now a Code of Procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties, not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore, be guarded against (provided always that justice is done on both sides) lest the very means designed

for the furtherance of justice be used to frustrate it. Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.

Applying the principles laid down by the Apex Court to the facts of the present case, if the Writ Petition is not restored, it will amount to imposing penalty on the applicants which would be disproportionate to the gravity of the lapses or omission.

18. In the case of **State of Nagaland Vs. Lipok AO, (2005) 3 Supreme Court Cases 752**, the Apex Court has held that what counts is not the length of the delay but the sufficiency of the cause. In the present case, immediately after passing of the order dated 3rd May, 2019 in Writ Petition No.3688 of 2019, the applicants have taken out present application on 3rd July, 2019. I am, therefore, of the opinion that the applicants have made out a sufficient cause for condoning the delay. It is also relevant to note that if the delay is not condoned, Writ Petition will be dismissed on technical ground and not on merits.

19. Dr. Gupta relied on Rules-3, 5 and 6 of the Bombay High Court Appellate Side Rules, 1960. I do not find that reliance placed by Dr. Gupta on these rules advances respondents' case. Dr. Gupta reiterated that he may be given sufficient time to take inspection of the record and also for filing detail reply. The Application was initially heard on 18th July, 2019 when respondent No.1 appeared in person and sought time for filing reply. At his request, matter was adjourned to 1st August, 2019. On 1st August, 2019, Dr. Gupta appeared and sought time for filing reply. The matter was accordingly adjourned to 8th August, 2019 for filing reply. Dr. Gupta had placed interim submissions dated 8th August, 2019 on record which are taken into consideration.

20. In the light of the above discussion, C.A is allowed in terms of prayer clauses (a) and (b) with no order as to costs. Liberty is reserved to the applicants to move the regular Court taking up Writ Petition.

[R.G. KETKAR, J.]