

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

CIVIL APPLICATION NO.3115 OF 2019

WITH

CIVIL APPLICATION NO.422 OF 2014

IN

FIRST APPEAL (STAMP) NO.1314 OF 2014 WITH

FIRST APPEAL (STAMP) NO.1314 OF 2014

Bismillah Khan S/o Hanif Khan and Ors.

...Applicant

Versus

The Board of Trustees of the Port of Mumbai
and Ors.

...Respondents

....

Mr. Arun B. Ketkar for the Applicant.

Mr. U.J. Makhija with Mr. Manoj Thakur i/b. M/s. Mulla and Mulla and
CBC for the Respondent No.1.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 15th OCTOBER, 2019.

P.C.:-

By the application (C.A. No.3115 of 2019) the Applicants have sought leave to file an appeal against the judgments dated 4th May, 1998 and 18th June, 1998 passed in Suit No. 6957 of 1975 and further (by C.A. No.422 of 2014) to condone the delay in filing the first appeal.

2. Heard the learned counsel representing the Applicants as well as the Respondent /original plaintiff and perused the records.

3. The Respondent No.1 was the original plaintiff in the suit. It had filed a suit for possession, mesne profit and other consequential reliefs. It appears that the Defendant in the suit had filed the written statement but had subsequently failed to appear and was set ex-parte. Upon considering the evidence adduced by the Plaintiff, by judgment dated 2nd March, 1998, the learned Judge, City Civil Court, Bombay decreed the suit in terms of prayer clauses (b) (c) and (h) of the plaint.

4. Since no decree was passed in terms of prayer clause (a), which was a prayer for possession, the Plaintiff filed an application for speaking to minutes. It appears that the said application was dismissed by the learned Judge of the City Civil Court, Bombay in view of subsequent change in his assignment. The said application was placed before the Principal Judge, City Civil Court, Bombay and an order was passed to place the said application before the Court Room No.3, who at the relevant time was dealing with the matters relating to recovery of possession. By order dated 18th June, 1998, the learned Judge, City Civil Court, Court Room No.3 allowed the application, which was styled as speaking to minutes and granted prayer clause (a) and thus directed the Defendants to forthwith deliver to the plaintiffs vacant and

peaceful possession of the said premises viz. Plot No.28-B situated at Coal Depot, Bombay.

5. Mr. Arun Ketkar, the learned counsel for the Applicant states that the Applicant had derived rights from the original Defendants. He submits that the order dated 18th June, 1998 was passed without notice to the Defendants. He further submits that the learned Judge has exceeded his jurisdiction and that the order is exfacie bad and illegal.

6. Upon perusal of the records, it is evident that the learned Judge, while decreeing the suit, by judgment dated 2nd March, 1998, had not granted the relief of possession. A perusal of the judgment does not prima facie indicate that it was a mere omission, an accidental slip or a typographical error which was required to be rectified by filing an application for speaking to the minutes. The records further indicate that the learned Judge had allowed the application and granted the prayer for possession without even issuing a notice to the Defendants. The learned Judge has not recorded a finding that correction of the order was necessitated due to typographical error or an error through oversight that might have crept in while transcribing

the original order, but has proceeded to castigate his brother Judge, who I am told is his senior colleague, for not dealing with the application for want of assignment. A plain reading of the order prima facie indicates that the learned Judge was under an impression that he was sitting in appeal while passing an order on the application for speaking to minutes.

7. As stated earlier, the original Defendants were not given any notice of this application and/or order passed thereon. The Applicant learnt about the impugned order only on receipt of notice of execution. The delay in my considered view is satisfactorily explained. The Respondent has already filed execution application and sought to execute the decree. Under the circumstances, the Applicants who are claiming rights through the original Defendants are likely to be adversely affected by the impugned judgment. They are therefore required to be heard and the legality of the order needs to be tested on merits.

8. Considering the above facts and circumstances, leave is granted to the Applicant to file an appeal against the impugned judgments. The delay in filing the appeal is condoned. Appeal be

registered subject to removal of the office objections, if any.

9. Both applications stand disposed of in above terms. List the first appeal on **25/11/2019**.

(SMT. ANUJA PRABHUDESSAI, J.)

Megha
Parab

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Megha Parab
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