

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

CIVIL APPLICATION NO. 87 OF 2019

IN

CIVIL REVISION APPLICATION (ST.) NO. 33378 OF 2018

Harikisan Kalidas Joshi (Dead) Thr. LRs. ...Applicants

Versus

Smt. Niranjana Dhirendra Shah & Ors. ...Respondents

Samir A. Vaidya - Advocate for the applicant.

Rajendra N. Bhagtjee – Advocate for the respondent no. 1.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 16th OCTOBER 2019.

P.C. :

The applicants' father claimed to have been the tenant, but the respondents maintained that he was a trespasser. On that ground, the respondents-owners filed RCS Suit No. 43 of 2002, to have the applicants' predecessor evicted from the Suit property. Pending that suit, the original defendant died, and his legal representatives were brought on record. That suit was decreed on 11.03.2014.

2. Aggrieved, the original defendant's legal representatives filed Appeal No. 28 of 2014. That was dismissed on 3.8.2017. Further aggrieved, the applicants filed the Second appeal before

this Court. But this Court, through its order dated 28.08.2018, held that no Second appeal is maintainable against the judgment by the District Court, under the Maharashtra Rent Control Act. It, nevertheless, allowed the applicants to explore alternative adjudicatory avenues. Then, the applicants have filed this Civil Revision Application—with a delay of 295 days. To have that delay condoned, they filed this Civil Application No. 87 of 2019.

3. The learned counsel for the applicants has submitted that the applicants *bona fide* pursued the remedy of second appeal for about eight months. Later, they realized that no second appeal would lie against the impugned judgment. Under those circumstances, they have invoked revisional jurisdiction of this Court and filed this Civil Revision Application. According to him, the applicants' conduct was *bona fide*, the delay was technical, that needs to be condoned.

4. The respondents' counsel, on the other hand, vehemently opposed any condonation of delay. According to him, the applicants' ancestor was a trespasser. He has occupied the property for decades without paying any rent. Even pending the suit, and later the appeal, neither the original occupant nor his legal representative, that is the applicants, offered to pay any rent or compensation for their use and occupation of the suit property. He has also submitted that though the Court's below has decreed the suit with costs, the applicants have not even paid those costs.

5. When I have queried with the applicants' counsel, he has submitted that the costs have not been quantified. At any rate, even now the applicants are willing to pay, of course, without prejudice to their rights, what could be termed interim compensation, to the respondents. So, that this Court could condone the delay and allow them to contest the matter on the merits.

6. First, delay of 295 days cannot be termed inordinate—more particularly when we notice under what circumstances the delay has occurred. Once the appeal was dismissed, the applicants approached this Court—within time. But they invoked a wrong remedy, the second appeal. Later, after about 8 months, they had their second appeal rejected. The Court did allow them to explore the alternative adjudicatory avenues. So, immediately, they filed the Civil Revision Application. The delay relates to the period the applicants have spent in the second appeal, which eventually proved futile.

7. At the same time, I must also hold that the applicants' conduct during the trial and appeal cannot be regarded as commendable. Having taken a plea that they are tenants rather than trespassers, they ought to have paid at least what they felt as the admitted rent to the owners. They did not do that.

8. Under these circumstances, the Civil Application is allowed subject to the conditions of the applicants depositing Rs. 2,00,000/- to the respondents as being part of either the defaulted rent or compensation pending the proceedings, before

the Courts below, in four weeks after the order is uploaded. As a matter of interim compensation, the applicants will continue to pay Rs. 10,000/- per month, pending this Civil Revision Application.

Thus, the delay stands condoned and the Civil Application is allowed. The Registry will number Civil Revision Application and place it in the usual course, for admission.

[DAMA SESHADRI NAIDU, J.]