

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

932 CIVIL REVISION APPLICATION NO.204 OF 2017

RAJENDRA MAGANLAL SONWANE
VERSUS
DEVIDAS HARIBHAI VED AND ANOTHER

...

Advocate for Petitioner : Mr. Kale Ajeet B.
Advocate for Respondent No.1 : Mr. S.N.Boiwar h/f Mr.
Chaudhary Vikramsingh T.

...

CORAM : V. K. JADHAV, J.
DATE : 20.02.2020

PER COURT :-

1. The learned counsel appearing for the respondent-landlord submits the reply since the applicant has introduced some new facts in his additional rejoinder. The same is accepted and taken on record.
2. Heard both the sides at admission stage.
3. The applicant is the original defendant. Respondent No.1 – original plaintiff has instituted the Special Civil Suit No.250 of 2001 for arrears of rent, damages and the possession of the suit property. The learned 3rd Joint Civil Judge Senior Division, Jalgaon by judgment and order dated 20.02.2004 has partly decreed the suit and directed the petitioner and the

original defendant No.2, jointly and severally, to pay certain amount to the plaintiff towards arrears of the rent including notice charges and further directed the present applicant to put the plaintiff in the vacant possession of the suit shop. Being aggrieved by the said judgment and decree passed by the Trial Court, the applicant – original defendant has preferred the appeal along with the application for seeking condonation of delay of ten (10) years, ten (10) months and fifteen (15) days caused in filing the said appeal. The learned District Judge – 5, Jalgaon by impugned order dated 19.09.2017, below Exh.1 in Civil Miscellaneous Application No.19 of 2015 has rejected the application. Hence this revision.

4. The learned counsel for the applicant submits that the judgment and decree passed in Special Civil Suit No.250 of 2001 is an *ex parte* judgment. The said suit was not contested on merits and it was decided without contest. The learned counsel submits that even though the said suit was decreed on 20.02.2004, for near about ten (10) years, the respondent No.1 – plaintiff has not filed any execution proceeding. The learned counsel submits that though it was not stated specifically in the application seeking condonation of delay caused in filing the

appeal that the settlement talks were going on between the parties and in view of the same, the execution was not filed for a considerable period. The learned counsel submits that the delay has been caused due to the reasons as stated in Civil Miscellaneous Application No.19 of 2015 that the applicant is doing a private business and due to slack of business he was not in a position to file an appeal within time. The learned counsel for the applicant submits that during pendency of the Civil Miscellaneous Application No.19 of 2015, the applicant has deposited the amount, as per the order passed by the learned District Judge – 5, Jalgaon, dated 08.07.2016, below Exh.6. The learned counsel submits that the applicant is still in possession of the suit shop and the applicant got the knowledge about the judgment and decree passed by the Trial Court only after receiving notice of the execution proceeding. The learned counsel submits that the applicant should get one chance to convince the First Appellate Court to look into the merits of the matter and to find out as to whether the Trial Court has rightly decreed the suit as against the applicant or not.

5. The learned counsel for respondent No.1 – plaintiff

submits that the Trial Court on 23.06.2003 has passed the 'No W.S. order' against the present applicant in the suit. The Trial Court has passed the order below Exh.1 in said Special Civil Suit No.250 of 2001 with observations that defendant Nos.1 and 2 appeared on 03.05.2002 and sought time to file the written statement, however, they have failed to file the written statement within last one year, hence the suit to proceed without W.S. against defendant Nos.1 and 2. The learned counsel for the respondent submits that except the amount deposited during the pendency of Civil Miscellaneous Application No.19 of 2015, the applicant has neither shown his willingness to deposit the balance amount towards the rent before this Court nor deposited it before the Court below. The learned counsel submits that there is no substance in the submissions made on behalf of the applicant that the applicant had no knowledge about the disposal of the suit and he came to know about the same only after receiving the notice of execution proceedings. The learned counsel submits that during the execution proceedings, respondent No.2 herein has raised an objection that he is in possession of the suit shop and only thereafter the present applicant has preferred an appeal

along with the application seeking condonation of delay. The learned counsel submits that there is an inordinate delay of more than ten (10) years, which is not satisfactorily explained. It has not been pointed out before the Court as to what prevented the applicant from preferring an appeal due to slack of business for more than ten (10) years. Thus no interference is required in the order impugned. There is no substance in this Civil Revision Application.

6. I have carefully gone through the contents of the Civil Miscellaneous Application No.19 of 2015 and the impugned order passed below Exh.1 in Civil Miscellaneous Application No.19 of 2015. There is no substance in the submissions made on behalf of the applicant that applicant had no knowledge about the disposal of the suit. There is an order passed by the Trial Court during pendency of the suit about non filing of the Written Statement despite appearance before the Court and seeking the time in filing of the Written Statement. It further appears that even though the said suit came to be disposed off, the applicants have preferred the appeal after the delay of ten (10) years, ten (10) months and fifteen (15) days. Furthermore, the applicant has also made the contradictory

statement that the respondent – plaintiff has not initiated the execution proceedings for near about ten (10) years and during that period, the compromise talks were going on between them. It does mean that the applicant had a knowledge about the decree passed in the suit and therefore, the compromise talks were going on between them. The applicant has given the only reason in the application that he was financially not in a sound position due to slack of business to prefer the appeal within time. However, as rightly observed by the learned District Judge that there is no cogent and convincing evidence on record to that effect. There is no satisfactory explanation given in the application for seeking condonation of such an inordinate delay. The District Judge has therefore rightly rejected the application. I find no fault in the order impugned. I find no substance in the present Civil Revision Application and I proceed to pass the following order :

ORDER

The Civil Revision Application is hereby dismissed.

(V. K. JADHAV, J.)

...

vmk/-