

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

WRIT PETITION NO. 1806 OF 2020

Shaikh Gulzar ... Petitioner
Vs.
Atlaswala Real Estate Pvt.Ltd. & Anr. ... Respondents

Mr.Vaibhav Sugadare a/w. Mr.Shaikh Yusuf Ali i/b. Mr.Deepak Lad for
Petitioner.
Mr.Shravan M. Vyas for Respondent No.1.

**CORAM : A.S. GADKARI, J.
DATE : 3rd March 2020.**

PC. :

1] By the present Petition under Article 227 of the Constitution of India, the petitioner/original defendant No.2 has impugned Order dated 18th January 2020 passed by the Appellate Bench of Small Causes Court at Mumbai in MARJI Application No.391 of 2019 in R.A.E. Suit No. 197/290 of 2014, dismissing the said application for condonation of delay of 693 days in preferring the appeal against the Judgment and Decree dated 15th February 2017 passed in RAE Suit No. 179/290 of 2014 by the learned Judge, Court No.22, Small Causes Court, Mumbai.

2] Heard Mr.Sugadare, learned counsel for the petitioner and Mr.Vyas, learned counsel for the respondent No.1. Perused the record.

3] The record indicates that, the respondent No.1/original plaintiff had filed the said R.A.E. Suit No. 179/290 of 2014 for eviction and possession against the respondent No.2 and the petitioner herein.

It is the case of the respondent No.1 that, the respondent No.2 sublet the suit premises to the petitioner. The record reveals that, after receipt of suit summons, the petitioner appeared through his Advocate but did not file his written statement. The Suit was therefore proceeded against him without his written statement on record. The Trial Court by its Judgment and Order dated 15th December 2017 decreed the said Suit and directed eviction of the petitioner and respondent No.2 from the suit premises.

4] It is the case of the petitioner that, after receipt of process of execution application in August 2019, he preferred the present Appeal along with MARJI Application No.391 of 2019 for condonation of delay of 693 days. It is stated in the said application that, the respondent No.1/original plaintiff during the pendency of the said Suit had suggested settlement with the petitioner and had assured the petitioner not to bother about the outcome of the said Suit and therefore the Advocate of the petitioner stopped appearing in the matter before the Trial Court. It is the only reason given by the petitioner for condonation of delay.

5] A minute perusal of the said application of the condonation of delay would clearly disclose that, no proper explanation, least to say,

satisfactory explanation has been offered by the petitioner for condonation of said inordinate and colossal delay in preferring the appeal.

6] The Trial Court in para No.11 of the impugned Order has observed that, the said Suit was instituted in the year 2014 and the decree was passed on 15th December 2017 i.e. almost after 3 years of institution of Suit. That, it cannot be expected that, the talks of settlement would go on for a period of more than 3 years and if the contention of the petitioner regarding settlement is to be accepted, it would have fructified positively in the interregnum. Perusal of record would prevail upon me to concur with the said observation.

7] In view of the above, I find that, the Order passed by the Trial Court does not suffer from any error either in law or on facts.

8] Petition being dehors of merits is accordingly dismissed.

[A.S. GADKARI, J.]

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