

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2422 OF 2019**

Mellona Developers Pvt. Ltd.

...Petitioner

Versus

Umesh Navinchandra Shah

...Respondent

Mr. Prasad S. Dani, Sr. Counsel i/b Mr. Haridas Rajendra Madhukar for the Petitioner

Mr. Venkatesh Dhond, Sr. Counsel a/w Mr. Naushad Engineer, Mr. Gaurav Mehta and Mr. R. V. Govilkar i/b M/s. Govilkar and Associates LLP for the Respondent

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 11th MARCH 2020

P.C. :

1 Heard learned counsel for the parties.

2 By this petition preferred under Article 227 of the Constitution of India, the petitioner (original plaintiff) has impugned the order dated 30/11/2015 passed by the trial Court, by which the trial Court was pleased to reject the petitioner's application seeking condonation of delay of 266 days in filing an application for setting-aside the order dated 7/3/2015 passed by the trial Court dismissing the suit for want of prosecution, as well the order dated 22/12/2017 passed by the appellate bench of the Small Causes Court in Revision Application, by which the appellate bench was pleased to confirm the order passed by the trial Court.

3 Learned senior counsel for the petitioner submits that in the facts, both the lower Courts ought to have condoned the delay in filing the application for setting-aside the dismissal order dated 7/3/2015 passed by the trial Court. He submits that the petitioner has shown sufficient cause for condoning the delay of 266 days in filing the said application. He submits that in any event, in the interest of justice, delay ought to have been condoned, so as to enable the petitioner to proceed with the suit on its own merits, subject to payment of some costs.

4 Learned senior counsel for the respondent opposes the petition. He submits that no interference is warranted in the impugned orders, having regard to the conduct of the petitioner. He submits that issues in the said case were framed in February 2014 and despite the petitioner being given several opportunities to file affidavit of evidence, failed to file the same, pursuant to which, the trial Court dismissed the suit for want of prosecution vide order dated 7/3/2015. He further submits that even the application seeking condonation of delay in filing the application seeking setting-aside of the dismissal order dated 7/3/2015 was filed belatedly i.e. on 30th November 2015, after almost eight months. He submits that even in the said application seeking condonation of delay, no sufficient cause has been spelt out for condoning the said delay.

5 Perused the papers as well as the impugned orders. A few facts as are necessary to decide the aforesaid petition are as under :

The petitioner is the original plaintiff, who had filed R.A.E Suit No. 184/310 of 2009 in the Court of the Small Causes at Bombay, *inter alia*, seeking eviction of the respondent on the premise that he had changed the user of the said premises. It appears that the petitioner, a Private Limited Company had authorized Mr. K. V. James, an Officer of the petitioner-company to prosecute the said proceedings on behalf of the said company. Pursuant to the summons, the respondent appeared in the said suit and filed his written statement on 1/6/2009. On 11/2/2013, the trial Court framed issues in the said suit. Thereafter, the matter was adjourned on several dates for filing of the petitioner's written statement i.e. on 19/3/2013, 25/4/2013, 27/6/2013, 30/7/2013, 3/9/2013, 3/10/2013, 15/11/2013, 10/12/2013 and 28/1/2014. It thus appears that the matter was adjourned from 11/2/2013 to 28/1/2014 i.e. on 9 dates, only for filing the petitioner's affidavit of evidence. Thereafter, on two dates, i.e. on 4/3/2014 and 19/3/2014, the matter was adjourned for exploring the possibility of a settlement. Thereafter, again on 27/3/2014 and 11/4/2014, the matter was

adjourned for filing petitioner's affidavit of evidence. On 16/6/2014, the matter was referred for mediation and on 11/7/2014, the mediation was reported to have failed and hence, the matter was adjourned to 28/7/2014 for filing the petitioner's affidavit of evidence. Thereafter, again on 28/7/2014, 14/8/2014 and 25/9/2014, the matter was adjourned for filing petitioner's affidavit of evidence. On 25/9/2014, the trial Court passed an order adjourning the matter to 24/12/2014 on the petitioner's request. The trial Court in its order dated 25/9/2014 whilst granting adjournment, observed as under :

“Heard Perused application & record. The matter record that issues were framed on dt. 11/2/13. For 19 months the Plaintiff not led the evidence. From 16/6/14 to 11/7/14 the period is taken to settle the dispute. Record files to show from the Plaintiff is not interest in prosecuting the suit & mere production of copy of prospective affidavit is not sufficient to show bonafide. When since 11/02/13 to 25/09/14 19 months the Plaintiff did nothing hence though the matter is of the year 2009 as Plaintiff not interested in prosecuting suit, adjourned for a longer date.”

Thereafter, again on 24/12/2014, the petitioner's Advocate sought an adjournment for filing petitioner's affidavit of evidence. On 11/2/2015, the petitioner passed a Board Resolution and authorized one Mr. B. Jaiswar, its Officer to prosecute the said suit. Thereafter, on 16/2/2015, on oral request of the petitioner's Advocate, the trial Court again

adjourned the matter to 7/3/2015 to enable the petitioner's Advocate to file petitioner's evidence. On 7/3/2015, authorized representative of the petitioner was absent, pursuant to which, the trial Court passed the following order :

“:ORDER:

While passing order on Exhibit-15 the application for adjournment, a note of the continuous absenteeism of the plaintiff and inaction action to lead evidence has been taken. After taking into account the conduct of the plaintiff, a long date was given on 25.09.2014, so that plaintiff can taken the note of it and to do the needful. However, on 24.12.2014, then on 16.02.2015, plaintiff did nothing. Despite the opportunities extended no evidence has been led. Today also plaintiff is absent and as usual oral adjournment has been sought. The conduct of the plaintiff shows that it has no interest in prosecuting the suit. Hence, suit is dismissed for want of prosecution.

No order as to cost.”

Thereafter, after almost eight months, petitioner filed an application on 30/11/2015 and sought condonation of delay of 266 days caused in filing the said application for restoration of the suit, which was dismissed for want of prosecution vide order dated 7/3/2015. The trial Court after hearing the parties, vide order dated 18/11/2017, was pleased to reject the said application for condonation of delay, after observing that the delay caused in filing the said application was not satisfactorily explained. It was also observed that the circumstances on record indicated that despite

the fact that petitioner had knowledge of the dismissal of the suit, the petitioner was negligent.

Being aggrieved by the said order dated 18/11/2017 passed by the trial Court by which the trial Court was pleased to reject petitioner's application seeking condonation of delay of 266 days, the petitioner filed a revision application before the appellate bench of the Small Causes Court on 22/12/2017.

The appellate bench of the Small Causes Court vide order dated 5/12/2018, dismissed the petitioner's revision application. The appellate bench observed that there was no satisfactory explanation for condoning the delay of more than 8 months in filing the application and that the conduct of the petitioner showed gross negligence on their part in not filing the affidavit of evidence.

6 It is pertinent to note that issues were framed by the trial Court on 11/2/2013, and that thereafter on several dates, the matter was adjourned to enable the petitioner to file affidavit of evidence. Finally, on one of the adjourned dates, when the matter was kept for filing affidavit of evidence i.e. on 7/3/2015, authorised representative of the petitioner was absent,

pursuant to which, the trial Court dismissed the suit for want of prosecution. The number of adjournments sought by the petitioner, clearly shows the conduct of the petitioner in trying to procrastinate the trial. Despite several adjournments being granted, the petitioner failed to file affidavit of evidence for almost two years. Even the delay condonation application was filed belatedly after eight months i.e. on 30/11/2015. A perusal of the said application does not show sufficient cause for condoning the delay of 266 days. The said application is bereft of details. The trial Court as well as the revisional courts had rightly rejected/dismissed the application/revision application, considering the conduct of the petitioner and for failure to show sufficient cause to condone the delay. No infirmity can be found in both the impugned orders. Considering the aforesaid, the petition is dismissed.

REVATI MOHITE DERE, J.