

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

928 SECOND APPEAL NO.454 OF 2013

MARUTI RAMCHANDRA SAUDAGAR AND OTHERS
VERSUS
DEVIDAS SANTARAM DHUMAL

...

Advocate for Appellants : Mr. Natu Sharad V.
Advocate for the respondent : Mr. Deshpande Amit S.

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27.08.2021

ORDER :-

. Present appellants are the original defendants, who want to challenge the judgment and decree passed in Regular Civil Suit No.590 of 2008 by learned 3rd Joint Civil Judge Junior Division, Latur on 06.08.2009, thereby restraining defendants i.e. present appellants, their agents, servants or any other person on their behalf from causing interference over the possession of the plaintiff in the suit shop. The said matter had proceeded *ex parte* against present appellants. It further appears that they had filed Regular Civil Appeal, however, there was delay. Since then they had filed application for condonation of delay i.e. Civil Miscellaneous Application No.202 of 2012. The delay was of 3 years and 22 days. After hearing both sides, the learned Principal District Judge, Latur rejected the application on 08.01.2013. Hence,

present second appeal.

2. Heard learned Advocate Mr. S. V. Natu for appellants and learned Advocate Mr. A. S. Deshpande for the respondent.

3. At the outset, it is to be noted that the relationship, with which the plaintiff had come, was that he is the tenant in respect of suit shop and the present appellants – original defendants are owners/landlords. He contended that since the defendants are obstructing his possession, he filed suit for injunction. As aforesaid, the matter proceeded without written statement against defendant Nos.1 to 3 and *ex parte* against defendant No.4. Taking into consideration the affidavit-in-chief and the unchallenged evidence of the plaintiff, the suit came to be decreed as aforesaid. The delay has not been condoned for the reasons stated in the order passed by learned Principal District Judge, Latur. The delay of 3 years and 22 days was huge and, therefore, there appears to be no substantial questions of law arising in this case. Further, it is to be noted that the injunction has been granted by the learned Trial Judge in order to protect the possession of the plaintiff over the suit shop. Taking into consideration the relationship between the parties, the said protection is available to the tenant as per the tenancy laws and definitely, the landlord has statutory right to take possession by all legal means.

Therefore, though the learned Trial Judge has not clarified that this protection is till the plaintiff is dispossessed by adopting legal procedure, that fact is enhanced in the order itself. No necessity to interfere. Second appeal, therefore, stands dismissed.

[SMT. VIBHA KANKANWADI, J.]

scm