

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

35 CIVIL APPLICATION NO.14098 OF 2015
IN SAST/29517/2015

SHOBHA MOHANRAO GADE

VERSUS

AHMEDNAGAR MUNICIPAL CORPORATION, THROUGH ITS
COMMISSIONER

...

Mr. M.B. Sandanshiv, Advocate for the applicant

Mr. V.S. Bedre, Advocate for the sole respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 02nd AUGUST, 2021.

PER COURT :

1 Present application has been filed for getting delay of 1565 days caused in filing Second Appeal condoned.

2 Heard learned Advocate Mr. M.B. Sandanshiv for the applicant and learned Advocate Mr. V.S. Bedre for the sole respondent.

3 Learned Advocate for the applicant submitted that applicant is the original plaintiff, who had filed civil suit for extension of period of her lease, that is, the suit was for seeking direction to the defendant for the

extension of period of lease and for perpetual injunction in respect of Municipal Shop (Gala) No.B/16 situated at Savedi Shopping Centre, Ahmednagar. The suit came to be dismissed on 06.07.2006. She filed Regular Civil Appeal No.251/2006 before learned District judge-1, Ahmednagar. It came to be dismissed on 24.03.2011. The applicant intends to challenge the said Judgment and Decree. The shop was still lying vacant and was not allowed by the Municipal Corporation to anybody. Applicant requested them to consider her request sympathetically, but it has not been considered and the time was consumed in that exercise. Therefore, she could not file the appeal within the limitation. She is interesting in running the business. The delay in preferring the appeal is not intentional. He prayed for condonation of the delay.

4 Learned Advocate for the respondent strongly opposed the application and submitted that no reasonable, much less sufficient ground has been shown for condoning the delay.

5 At the outset, perusal of the application would show that there is absolutely no reason shown/pleaded explaining the huge delay of 1565 days. The applicant has not come with a case that she was not aware of the dismissal of her appeal. When absolutely no reason has been stated, there is no question of condoning the delay.

6 Further, even if it is to be considered that the merits can be considered, even at this stage, yet, it is to be noted that it was the case of the plaintiff that defendant had allotted the said shop for running the business. Pursuant to the tender notice she was given the lease and agreement was entered into between the plaintiff and defendant on 23.08.1989. According to her, she was put in possession after the necessary payments. According to her, she had taken the shop for running a photo copy machine, but it was damaged due to short circuit. According to the plaintiff, she started chicken centre to earn livelihood in the suit premises. She further alleges that the officers of the defendant compelled her to stop the said business of chicken and threatened her to evict. The said lease had come to an end, but since the defendant had not allowed her to operate, she prayed for extension of period of lease. Both the Courts below have rightly held that there is no such legal right in favour of plaintiff to claim extension of period of agreement. Any agreement or contract has to be entered into as per the wish of both the parties, by completing the stages of proposal, acceptance. It appears that the defendant had served notice to her stating that since the period of agreement has come to an end and she is in arrears of rent, she should vacate the premises. It was very much indicative that the defendant had no intention to continue the contract. Under such circumstances, no Court of law can compel the defendant i.e. the owner of the property to lease out his/its

property. The suit in the form it was presented itself was not maintainable, and therefore, the suit was rightly dismissed, so also, the appeal was rightly dismissed. No purpose would be served even after condoning the delay. Later on, orally, it has been submitted by learned Advocate for the applicant that the respondent-Corporation has taken the possession from the plaintiff. Under such circumstance also the subject-matter of the suit does not exist now. Under such circumstance, on this ground also the application deserves to be dismissed. Accordingly, it is dismissed.

(Smt. Vibha Kankanwadi, J.)

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