

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 679 OF 2019
IN
STAMP APPLICATION (MAIN) NO.1780 OF 2019 F

REKHA RAGHUNATH KUTTIKAR ...Applicant
VS
SAVIO JOAO DORETHY REBELLO AND ...Respondents
ANR.

Mr. Nilesh V.S. Shirodkar, Advocate for the applicant.

Mr. G. Teles with Mr. A Sail, Advocates for the respondents.

CORAM: MANISH PITALE, J

DATED: 27th November, 2021

ORAL ORDER:

1. Heard learned Counsel appearing for the applicant and the respondents.
2. This is an application for condonation of delay of 1292 days in filing the accompanying Second Appeal. This Court issued notice in the application. The respondents filed their reply and in response thereto, the applicant has also filed a rejoinder affidavit.
3. The facts in brief leading up to filing of the present application are that a suit for eviction was filed against the applicant

in the year 2009. The suit was contested on merits and by judgment and decree dated 29/11/2014, the applicant was directed to be evicted from the suit premises.

4. Aggrieved by the same, the applicant filed First Appeal before the District Court and the Appeal stood dismissed on 13/10/2015. The respondents filed an execution application, which remained pending before the Executing Court.

5. On 21/11/2015, the applicant filed an application for review before the First Appellate Court, claiming that there had been an error apparent on the basis of the record. During the pendency of the review application the applicant filed objection on 02/04/2016 before the Executing Court under Section 47 r/w 151 of the Code of Civil Procedure (CPC), claiming that the decree itself was null and void.

6. The applicant also admittedly moved an application under Section 24 of the CPC for transfer of the review application. The said application was dismissed. Thereafter, on 23/04/2018, the review application was also dismissed. On 26/07/2018, the Executing

Court dismissed the aforesaid objection raised on behalf of the applicant.

7. After more than four months of the review application being dismissed, the applicant filed a Civil Revision Application before this Court on 30/08/2018. The said Civil Revision Application was withdrawn on 18/04/2019, in the face of objection regarding maintainability raised on behalf of the respondents. It is thereafter, that the present application was filed alongwith the accompanying Second Appeal.

8. Mr. Shirodkar, learned Counsel appearing for the applicant submitted that the aforesaid chronology of events itself would demonstrate that there was no deliberate attempt on the part of the applicant to delay the proceedings and that the applicant was entitled to avail of the remedies available in law. It was submitted that when the Civil Revision Application was found to be not maintainable against the order passed in review by the Appellate Court, the applicant was advised to withdraw the same. The proceedings in the Civil Revision Application were pursued *bona fide* and therefore, the period of time consumed during the pendency of the Civil Revision Application ought not to be

considered as forming part of the delay in approaching this Court. It was further submitted that prior to the aforesaid step on the part of the applicant of filing Civil Revision Application, the applicant was *bona fide* pursuing the remedy of review before the Appellate Court.

9. Additionally, it was pointed out that in the present application for condonation of delay it was specifically stated that the applicant was sick and unable to walk and further that the aforesaid assertion was supported by a Certificate issued by the Doctor dated 27/10/2018. On this basis, it was submitted that sufficient cause was made out for condonation of delay and that the applicant deserved an opportunity for consideration of her case on merits.

10. On the other hand, Mr. Teles, learned Counsel appearing for the respondents vehemently opposed the contentions raised on behalf of the applicant. It was submitted that the chronology of events and the admitted facts of the present case demonstrate that the applicant has left no stone unturned to avoid consequences of the decree of eviction passed by the trial Court against her. It is submitted that the respondents have not been able to enjoy the fruits of the decree passed in their favour as far back as on

29/11/2014, in the suit filed in the year 2009. It is submitted that there are no *bona fides* on the part of the applicant while claiming that she is suffering from ill-health, as one of the reasons why she could not file the accompanying Second Appeal within the period of limitation. The learned Counsel has commented upon the nature of the medical certificate. On this basis it is submitted that the application deserves to be dismissed.

11. This Court has considered the contentions raised on behalf of the rival parties. The material placed on record is also perused. The chronology of events noted above is not disputed by either party. It needs to be examined whether the applicant has placed on record sufficient cause for condonation of delay.

12. As noted above, the applicant suffered the decree of eviction on 29/11/2014 and challenged the same before the Appellate Court and the appeal also stood dismissed on 13/12/2015. The review application filed by the applicant remained pending till the year 2018, when it was eventually dismissed on 23/04/2018. In the interregnum the applicant was consistently resisting the execution proceedings initiated by the respondents. On 02/04/2016, the applicant filed an objection to the effect that the decree itself was

null and void and therefore, it was inexecutable. After contest in the said objection, the Executing Court eventually dismissed such objection on 26/07/2018.

13. The record shows that the applicant then filed the aforesaid Civil Revision Application on 30/08/2018 before this Court. The said Revision application was obviously not maintainable. Nonetheless, the record shows that the said Revision Application was filed more than four months after dismissal of the said Review Application by the Appellate Court.

14. This Court is of the opinion that the manner in which the applicant has conducted the proceedings before the Appellate Court in the Review Application and before the Executing Court while resisting the decree, it becomes obvious that she has actively attended to the proceedings and all attempts have been made to thwart the decree. Yet, it is found that after the Review Application was dismissed on 23/04/2018, the applicant took a good four months or more to file the Civil Revision Application. It is not as if the applicant was prohibited by any sufficient cause to move the accompanying Second Appeal during the said period because she was actually resisting the Execution proceedings before the

concerned Court. The impression that this Court has gathered is that in the face of eviction decree passed as far back on 29/11/2014, which stood confirmed by dismissal of the appeal on 13/10/2015, the applicant was initiating proceedings after proceedings to avoid the execution of decree, while refusing to challenge the same by filing Second Appeal, which was eventually filed in the year 2019. Even in the review application filed before the appellate Court, the applicant had filed an application for transfer of the proceedings, which eventually stood dismissed by the District Court.

15. In this backdrop, when the statement made in paragraph 12 of the instant application regarding the health condition of the applicant is perused, it becomes clear that such a ground is taken for the first time before this Court, with the intention to seek sympathy of the Court. To support the same, a certificate of Doctor dated 27/10/2018 is placed on record. A proper appreciation of the said certificate would show that according to the Doctor who issued the certificate, the applicant was unable to walk at the time when certificate was issued, having developed an ulcer on her legs. It is significant that while the aforesaid certificate was dated 27/10/2018, on the basis of which the applicant claims that she was totally

bedridden, the aforementioned Civil Revision Application was filed on 30/08/2018 and it was pursued before this Court. The applicant was also resisting the execution proceedings. The manner in which the health condition of the applicant is now sought to be projected and the nature of the document in the form of certificate dated 27/10/2018, is placed before this Court, it appears that the ground of poor health condition is raised as an afterthought on the part of the applicant.

16. Although it is laid down in various judgments that the endeavour of the Courts should be to decide matters on merits, yet it is also recognized that when sufficient cause is not demonstrated for condonation of delay and rights are crystallised in favour of the opposing party, the Court ought not to show sympathy and upset rights that have already been crystallised.

17. In the present case, the suit was filed as far back in the year 2009, the decree in favour of the respondents was passed on 29/11/2014 and the appeal against the same was dismissed as far back as on 13/10/2015. The accompanying Second Appeal was eventually filed on 02/05/2019, which was about four years after the appeal was dismissed and the decree was confirmed. This Court

finds that the applicant has not been able to demonstrate sufficient cause for condonation of delay

18. At this stage an attempt was made on behalf of the applicant to argue on merits of the matter. While considering the question for condonation of delay, it would not be appropriate for the Court to go into the merits of the matter and therefore, the said contentions were not considered.

19. The learned Counsel appearing for the applicant placed reliance on judgment of the Hon'ble Supreme Court in the case of ***Deepchandra Shankar More v/s. Balu Gangaram More*** (Judgment and order dated 07/05/2019 passed in Civil Application No.4669 of 2019). The said judgement is clearly distinguishable for the reason that in the said case, the Court was considering a case of an application seeking setting aside ex-parte decree. The Court on facts found that sufficient cause was demonstrated by the applicant for condonation of delay as no deliberate inaction or lack of *bona fide* was imputable to the party seeking condonation of delay.

20. In view of the findings rendered herein above in the present case, the aforesaid judgment of the Supreme Court is not applicable.

21. Hence, the application is dismissed.

MANISH PITALE, J.