

Bhalchandra
G. Dusane

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

WRIT PETITION NO.12718 OF 2017

Smt. Renu Thapa Alias M.G. Udaykumar Petitioner

Vs.

Smt. Dundawaa Shivrudruppa Kalimani Respondents
& Ors.

Mr. Yatin R. Shah a/w Shivam Bhagwati a/w Shahzad Khajotia a/w
Apurva Pawar for the Petitioner

Coram : NITIN W. SAMBRE, J.

Date : 20th JANUARY, 2021

P.C.:

1. The Petitioner-tenant suffered the eviction decree against which an appeal was preferred, wherein there was a delay of 1 year, 11 months and 7 days. Vide the order impugned dated 6th June, 2017, the learned District Judge-8, Pune rejected the prayer for condonation of delay. As such, this petition.

2. Heard learned counsel appearing for the Petitioner. His submissions are that the decree was exparte and conditional. It was incumbent on the part of decree holder to communicate the decree

within a period of one month and submit compliance thereof to the Court, who has passed the decree i.e. Small Causes Court, Pune. According to the learned counsel, the same was never complied with. He would invite attention of this Court to paragraph 23 of the stay application moved in the appeal, wherein a specific ground to that effect was raised. He was fair enough to invite attention of this Court to the reply to the said pleadings given by the decree holder wherein the decree holder has denied the claim of the Petitioner/judgment debtor.

3. In the aforesaid background, according to learned counsel for the Petitioner once the condition is not complied with, the Petitioner has every right to assail the decree. The further contention is that the delay is appropriately explained as the Petitioner-tenant was out of town for almost three years, and there was no communication about the proceedings, which the Court below failed to consider.

4. With the assistance, I have gone through the respective pleadings and also the observations made in the order impugned.

5. Admittedly, there is a delay of 1 year, 11 months and 7 days. In support of condonation of delay, the bonafide cause i.e. sought to be established was that the Petitioner-tenant was out of town for almost three years and as such there was no communication about the court proceedings to her. The further contention of the learned counsel for the Petitioner is that even if presuming that there is exparte decree, the same was conditional and the condition is not complied with. At this stage, it is worth to observe here that the decree for eviction is already executed and the Petitioner has lost the possession way-back.

6. Apart from above, the cause cited in support of condonation of delay cannot be termed to be sufficient cause particularly when it was well within the knowledge of the Petitioner that the decree was put to execution.

7. The appellate Court has observed that the Petitioner has participated in the execution proceedings, as such she has knowledge about passing of the decree.

8. In the light of observations made herein-above, I see no reason for causing any interference in extra ordinary jurisdiction.

9. The writ petition as such fails. Dismissed.

(NITIN W. SAMBRE, J.)