

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO.9954 OF 2015**

**SHAIKH ASHFAQUE SHAIKH MUSTAFA  
VERSUS  
SYED MOINUDDIN SYED FAKRUDDIN AND ANOTHER**

...  
Advocate for Petitioner : Mr. Umesh N. Shete  
Advocate for Respondent Nos.1 & 2: Mr. Anil S. Bajaj  
...

**CORAM : NITIN B. SURYAWANSHI, J.**

**DATE : 08<sup>th</sup> JUNE, 2022**

**PER COURT :**

1. The petitioner is aggrieved by the judgment and order passed by the learned Additional District Judge – 4, Aurangabad, in M.A.R.J.I. No.296/2013, thereby rejecting the application filed by the petitioner for condonation of delay.
2. The petitioner is a tenant and the respondents are the landlords. The respondents filed Rent Suit No.29/2010, in the Court of learned Civil Judge, Junior Division, Aurangabad. The petitioner appeared in the suit, but he did not participate in the trial. The suit came to be decreed by the judgment and decree dated 06-04-2011.
3. The respondents/landlords thereafter filed execution proceedings bearing R.D. No.120/2011. Notice was issued and was served on the petitioner on 21-04-2013. The petitioner thereafter filed M.A.R.J.I. No.296/2013 on 04-09-2013 seeking condonation of

delay of 747 days. After hearing the parties the said application is rejected. Hence, the present petition.

4. Heard Mr. Umesh N. Shete, learned advocate for petitioner and Mr. Anil S. Bajaj, learned advocate for respondents.

5. It is a matter of record that the petitioner sought condonation of delay of 747 days on two grounds. First that, his advocate did not inform him about the trial and the decision and second that, his mother was ill and therefore, he could not challenge the judgment and decree in time.

6. In the evidence led by the petitioner, he has given vital admissions in the cross-examination. He has admitted that he did not bother to meet his advocate for years together, to know the status of the proceedings, though it was his duty to regularly know the progress of the proceedings. He did not bother to attend the dates of the rent suit and never cared to know the progress of his case from time to time.

7. In respect of the ground of ailment of his mother, he has failed to give any details and particulars about illness of his mother. What ailment she was suffering from and what care the petitioner had to take, because of which he could not approach the Court at earlier point of time, is not at all mentioned in the

application. No medical certificate is produced in support of his contention about the ailment of his mother. He did not even care to examine the doctor to prove the ailment of his mother. Therefore, this ground is also not substantiated by the petitioner.

8. Apart from the above, the learned advocate for respondents has pointed out that in terms of Section 15 of the Maharashtra Rent Control Act, 1999, it is the duty of a tenant to deposit arrears of rent, on the first date of appearance and thereafter he is duty bound to deposit the rent regularly. The petitioner has failed to do so. In the year 2013 he has deposited Rs.60,635/-, Rs.1960/- and Rs.10,000/- towards arrears of rent and thereafter he has not paid any rent. According to the learned advocate for respondents as on today approximately Rs.30,000/- are the arrears. He further states that the suit property is a commercial property which the petitioner is enjoying since long. The judgment and decree is of the year 2011 and till date the landlord is kept away from possession of the suit property and is deprived of the fruits of the decree.

9. The learned advocate for petitioner strenuously urged that the petitioner is ready to deposit the arrears of rent and he may be given an opportunity of hearing by imposing reasonable cost.

10. Taking into consideration the peculiar facts of the present case and the admissions given by the petitioner in the cross-examination and non payment of rent under Section 15, this Court is of the view that the petitioner has failed to make out a case for exercising extraordinary writ jurisdiction. The first appellate Court, by giving cogent reasons has rightly rejected the application for condonation of delay filed by the petitioner. There is no illegality or perversity found in the order impugned in the present petition.

11. The writ petition being devoid of merits is dismissed. No costs.

**(NITIN B. SURYAWANSHI, J.)**