

S.S.Kilaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5962 OF 2019

Messrs Ebrahim Electric Works
Through Proprietor – Mr. Ebrahim Balbale .. Petitioners
Versus
Mumtaz Narendra Vyas
(Since deceased through her legal heir)
Malika Narendra Vyas .. Respondent

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- Mr. Afroz A. Siddiqui a/w. Ms. Afrin Khan for the Petitioners.
 - Mr. R.A.Shaikh a/w. Mr. Hasan Sayed for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 27, 2022

P.C.:

1. Perused the impugned order dated 14.06.2018 and heard the learned counsel appearing for the respective parties.

2. The order dated 14.06.2018 has been passed by the learned Trial court while disposing of Exhibit-13 i.e. Application filed by the Defendant Nos. 1 and 2 for setting aside ex-parte order dated 16.04.2018 which had directed that the suit be proceeded with ex-parte.

3. Mr. Siddiqui, learned counsel appearing for the Petitioners i.e. original Defendant Nos. 1 and 2 states that the impugned order

records that pursuant to service of summons within a period of 30 days the application for setting aside of the order had been filed in the Trial court. Hence, there was no delay on the part of the Petitioners to approach the Trial court. However, since there was personal difficulty on the date of hearing for the counsel appearing in the matter the junior counsel who appeared was not in a position to conduct the matter and hence order dated 14.06.2018 came to be passed dismissing the application without hearing the Petitioners on merit.

4. Mr. Shaikh, learned counsel appearing for the sole Respondent states that the original Plaintiff has expired and in her place the sole Respondent who is the only legal heir has been brought on record in the Trial court. He submitted that the suit is for eviction of the Petitioners who are in possession of the suit property and are receiving substantial benefit out of subletting the same and considering that the suit being filed 4 years ago, Respondent-landlord is at hardship; he therefore makes an earnest request to the Court to pass directions for expeditious hearing and disposal of the suit.

5. Learned counsel appearing for the Petitioners submits and assures the Court that the Petitioners shall not seek any adjournments unless absolutely necessary and with the leave of the Trial court and proceed with the trial before the Trial court. He submitted that the

Petitioners had taken out an application under Order 7 Rule 11 of the Civil Procedure Code, 1908 (C.P.C.) which was rejected by the Trial court and the Petitioners are in the process of filing a Revision Application before the appellate bench for which some time may be granted.

6. After hearing the learned counsel appearing for both the parties, the following order is passed:-

ORDER

(i) The impugned order dated 14.06.2018 is quashed and set aside subject to the Petitioners depositing an amount of Rs. 10,000/- with the High Court Legal Services Committee, Mumbai within a period of two weeks from today;

(ii) The learned Trial Court shall hear and dispose of the Application under Exhibit-'13' within a period of 6 weeks from today;

(iii) The Petitioners shall file the Revision Application against rejection of their application under Order 7 Rule 11 of the C.P.C. before the appellate bench of the Trial court within a period of one week from today; the appellate bench shall

dispose of the Revision Application within a period of 6 weeks from today;

(iv) The learned Trial court is requested to dispose of the subject suit as expeditiously as possible and in any event within a period of 12 months from today;

(v) Office is directed to accept the Vakalatnama of Advocate R.A.Shaikh on behalf of the Respondent.

7. Writ Petition stands disposed of in the above terms.

[MILIND N. JADHAV, J.]

SONALI
SATISH
KILAJE

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by SONALI
SATISH KILAJE
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2022.04.27
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