

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.4307/2021

Dr.G.D. Gattani thr Lrs and others V the Resident Deputy Collector, Amravati and
another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. A.P. Chaware, Advocate for petitioners.
Mr. N.R. Rode, AGP for resp. no.1.

CORAM : AVINASH G GHAROTE, J.
DATE : 24-08-2022

Heard Mr. Chaware, learned Counsel for the petitioners.

2. The record shows an absolutely abysmal state of affairs. The proceeding under the C.P. and Berar Letting of Houses and Rent Control Order, 1949 were instituted by the landlord in which an order came to be passed on 31-08-1989 by the Rent Controller, against which an Appeal came to be preferred under clause 21. This Appeal came to be dismissed on 16-06-1990 by the Resident Deputy Collector. An application for review came to be filed under Clause 21(2-a) of the Rent Control Order which came to be dismissed in default on 22-06-2012 and application for restoration of review came to be filed on 09-03-2017 along with an application for condonation of delay. The delay was 4 years 1 month and 18 days. In the meantime, after issuance of notice under Section 106 of the Transfer of Property Act a Civil Suit No.44/1992 for eviction came to be filed before the Small Causes Court which was decreed on 31-8-2001, and Appeal against which being RCA

No.261/2001 came to be dismissed on 30-10-2009. However, the decree of Small Causes Court has been made executable subject to the decision of the review under clause 21 of the Rent Control Order. By an order dated 23-09-2021 the learned Resident Deputy Collector has dismissed the application for condonation of delay holding that no justifiable or sufficient cause has been shown, for filing an application for restoration of the review application dismissed in default on 22-06-2012. Here is the case where the landlord has been granted permission to terminate the tenancy of the Petitioner tenant by the Rent Controller on 31-08-1989 in pursuance to which a decree has also been passed for eviction in RCS No.44/1992 on 31-01-2002 and still the execution of the decree continuous to be thwarted by the tenant. The ordersheet of the review application which is placed on record at page 28 onwards indicates, that the review itself, was pending from 30-11-1990 till it was dismissed in default on 22-02-2012 a period of more than 22 years. The order sheet further indicates that the petitioner has been constantly shown to be absent in the review application. In fact though it was not necessary in law, notice was also issued to the petitioner/tenant to remain present. The learned Resident Deputy Collector in the impugned order has considered all these positions and has rightly held that there is no sufficient cause shown to condone the delay. It is not permissible for litigant to file proceedings before the authority and to remain absent years together thereby languishing the proceedings and then apply for restoration on one ground or the other.

3. Considering the entire state of affairs as is spelt out from the ordersheet and what has been stated above, I do not see any reason to interfere with the order dated 23-09-2021 passed by the respondent

no.1 in rejecting the application for condonation of delay. The petition is therefore without any merit. Hence, it is dismissed. No costs.

JUDGE

Deshmukh