

SPChauhan

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

CIVIL APPLICATION NO. 31 OF 2023
IN
CIVIL REVISION APPLICATION STAMP NO. 30380 OF 2022
WITH
CIVIL REVISION APPLICATION STAMP NO. 30380 OF 2022

Shaikh Abdul Wahid Najirahemad ... Applicant

Versus

Shaikh Abdul Wahab Najirahemad and others ... Respondents

....
Mr. R.B. Deshmukh, Advocate for Applicants

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CORAM : GAURI GODSE, J.
DATE : 13th February, 2023

PER COURT :

1. This application is filed for condonation of delay of 157 days in filing the Civil Revision Application. The Civil Revision Application arises out of rejection of the application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC").
2. The reason given in the application for condonation of delay is with respect to paucity of funds for expenditure for the purpose of filing the Civil Revision Application. Since the challenge in the Civil Revision Application is with respect to rejection of claim under Order VII Rule 11 of CPC, I called upon the

learned Advocate to point out the merits for challenging the impugned order.

3. Learned counsel for the applicant submitted that the application under Order VII Rule 11 of CPC, was filed as the order directing the plaintiff to file valuation report by order dated 23rd January, 2018 was not complied with. The impugned order records that the order directing the plaintiff to submit valuation report is complied with though belatedly. The impugned order further also records that the deficit court fees is also paid. Hence, by the impugned order the application under Order VII Rule 11 of CPC, is rejected as the deficit court fees is already paid by the plaintiff.
4. Learned Advocate appearing for the applicant submitted that the application that was filed by the plaintiff for permission to submit the valuation report and pay the deficit court fees was allowed without issuing notice to the applicant. He, therefore, submitted that the compliance which is done by the plaintiff beyond the time that was granted to him cannot be a ground to reject the application under Order VII Rule 11 of CPC. He submitted that there has to be a strict compliance of the directions issued for proper valuation of the suit and payment of deficit Court fees.
5. I have perused the record of Civil Revision Application. The order allowing the plaintiff to submit the valuation report and permission to pay the deficit court fees is never challenged. The reason given by the learned Trial Judge for rejecting the

application under Order VII Rule 11 of CPC, is that there is already compliance made by the plaintiff regarding submission of valuation report and payment of deficit court fees.

6. Learned counsel for the applicant submitted that the issues in the suit are framed and the suit is posted for recording evidence. In such circumstances, I do not find it necessary to issue notice to the respondent in the application for condonation of delay. Issuing notice in the application for condonation of delay will unnecessarily prolong the litigation. Hence, in the interest of justice and for the reasons stated above, delay is condoned and the application is allowed.
7. With respect to merits of the impugned order, for the reasons stated above, there is no case made out to interfere with the impugned order. Learned Trial Judge has rightly recorded that the compliance for the purpose of submitting valuation report and payment of deficit court fees is already complied with by the plaintiff. It is not the case of the applicant that the order allowing the plaintiff to submit the valuation report and pay the deficit court fees was anytime challenged.
8. In such circumstances, in the limited jurisdiction under Section 115 of CPC, I do not see any reason to interfere with the impugned order. There is no merit in the Civil Revision Application and the Civil Revision Application is dismissed.
9. At this stage, the learned counsel appearing for the applicant submits that he may be allowed to challenge the order allowing

the plaintiff to submit valuation report and payment of deficit Court fees. The said order was passed on an application filed on 24th November, 2021. The order impugned is dated 28th February, 2022. It is not the case of the applicant / defendant that he was unaware about the order allowing the plaintiff to submit valuation report and pay deficit Court fees.

10. Hence, I do not find any reason to grant liberty at this stage, to challenge the order allowing the plaintiff to file valuation report and to pay deficit Court fees. Hence, the request for said liberty is rejected.

[GAURI GODSE, J.]