

SGPunde

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

CIVIL APPLICATION NO. 14158 OF 2016  
IN  
CIVIL REVISION APPLICATION [ST] NO. 32857 OF 2016  
AND  
CIVIL APPLICATION NO. 10812 OF 2022  
IN  
CIVIL REVISION APPLICATION [ST] NO. 32857 OF 2016

|                            |                |
|----------------------------|----------------|
| Hemraj Devram Joshi        | ... Applicant  |
| <i>Versus</i>              |                |
| Subhash Madhavrao Sonawane | ... Respondent |

...  
Mr. Harish H. Padalkar – Advocate for applicant  
Mr. L. V. Sangit – Advocate for respondent  
....

CORAM : GAURI GODSE, J.  
DATE : 07<sup>th</sup> FEBRUARY, 2023

**PER COURT :**

1. This application is filed for condonation of delay of 387 days in filing the Civil Revision Application. Civil Revision Application is filed by the tenant for challenging concurrent decree for eviction passed by both the courts on the ground that the applicant has carried out permanent construction without the permission of the landlord.
2. During the pendency of the present civil application, the original tenant / applicant expired. Hence, Civil Application No. 10812

of 2022 is filed for bringing on record the names of his heirs and legal representatives. Even in that application, there is delay of 418 days. In the application for bringing on record heirs of the deceased tenant, the heirs and legal representatives of the deceased tenant have contended that, in the execution proceedings they had got their names substituted in place of the original tenant. The learned counsel appearing for the applicant states that since their names were substituted in the executing court, the applicants, were under bonafide impression that a separate application is not required to be made in the civil revision application.

3. In view of the reasons stated in the application and oral submissions advanced on behalf of the applicants, this application is allowed in terms of prayer clause 'B' and 'C', which read as under:

'B' - The applicants mentioned in the title clause of the application may kindly be taken on record as legal representatives of deceased Hemraj Joshi in proceedings of C.R.A. Stamp No. 32857/2016.

'C' - The delay of 418 days in bringing legal representatives of deceased Hemraj Joshi on record may kindly be considered."

4. The applicant will carry out the amendment to the application for delay condonation as well as civil revision application within a period of six weeks from today.
5. So far as the civil application for condonation of delay is concerned, in paragraph no. 4 of the application it is stated that the applicant had initially filed second appeal which could not be registered as the same was not maintainable. It is further stated that, subsequently, writ petition was filed in this court and the same was withdrawn for the purpose of filing revision application, as there was an objection with respect to the tenability of the writ petition.
6. There is an affidavit-in-reply filed on behalf of the respondent-landlord for opposing the application for condonation of delay. It is submitted on behalf of the respondent that the application for condonation of delay does not mention any dates with respect to the applications made for getting the certified copies of the impugned order, the date and number of filing the second appeal, date and filing with respect to the writ petition and when it was withdrawn. The reason given that the applicant was not keeping well is also not acceptable as neither there are any details given

with respect to the same nor was there any medical certificate attached therewith. Learned counsel for the respondent thus submitted that the application contains vague statements without any particulars and hence there is no satisfactory explanation for inordinate delay of more than a year.

7. The learned counsel for the respondent states on instructions that the eviction decree is already executed and possession of the suit premises is handed over to the respondent on 17<sup>th</sup> August, 2022. He further states that the execution petition is also disposed off as fully satisfied by order dated 08<sup>th</sup> September, 2022. In such circumstances, the learned counsel for the respondent submits that there is no reason for condonation of delay at this stage.
8. Though the decree for eviction is executed, the applicant would be entitled to challenge the decree in the present civil revision application. Only because the decree is executed, the application for condonation of delay cannot be dismissed solely on the said ground. Hence, I have considered the submissions on merits. I have perused the application for condonation of delay. The learned counsel for the respondent is right in opposing the application on the ground that the contents of the civil application are as vague as possible. Not a single date is

mentioned with respect to the filing of the second appeal and/or filing of the writ petition and/or dates with respect to the withdrawal of the writ petition for the purpose of filing civil revision application.

9. Since the main challenge in the civil revision application is with respect to the concurrent decree for eviction on the ground of carrying out permanent construction over the suit property, I called upon the learned counsel for the applicant to point out the merits of the reasons for challenging the impugned judgment and decree. Only with a purpose to give an opportunity of hearing to the applicants with respect to merits of the civil revision application, the Civil Application No. 10812 of 2022 for condonation of delay is allowed in the interest of justice
10. The civil revision application is immediately taken up for hearing.
11. The learned counsel for the applicant relied upon the court commissioner's report and he submitted that perusal of the court commissioner's report would show that there is no permanent construction carried out by the applicant/tenant. He submitted that, though the court commissioner's report does not reveal that there was any kind of permanent construction carried out, both

the courts have relied upon the court commissioner's report for arriving at the finding that there was permanent construction carried out. According to the applicant, the repairs to the property was not permanent in nature. However, there is no dispute that there was no attempt made by the tenant to seek permission from the respondent/landlord as is required under clause (b) of sub-section (1) of section 16 of the Maharashtra Rent Control Act, 1999.

12. I have perused the judgments of both the courts. The learned counsel for the applicant is not right in submitting that both the courts have only relied upon the court commissioner's report. The reasoning recorded by both the courts would show that the oral evidence in support of the court commissioner's report as well as oral evidence and the admissions given by the tenant are also taken into consideration for arriving at a finding that the tenant has carried out permanent construction without taking permission of the respondent/landlord.
13. All the submissions made on behalf of the applicant are with respect to the factual findings recorded by both the courts and the submissions made on behalf of applicant amounts to re-appreciation of the entire evidence. Both the courts have

arrived at a concurrent finding by examining in detail the evidence on record. I do not find any illegality or perversity in the reasonings recorded by both the courts. There is no reason to interfere in the findings recorded by both the courts. No case is made out to exercise the limited jurisdiction under Section 115 of the Code of Civil Procedure, 1908. Hence, so far as the merits of the civil revision application is concerned, there are no grounds made out for interference by this Court.

14. For the reasons stated above, there is no merit in the Civil Revision Application. Hence, the Civil Revision Application is dismissed.

[ GAURI GODSE ]  
JUDGE