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IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 1 OF 2023

THE MAZANIA OF TEMPLE OF
SHREE LAXMI NARAYAN THR.
ITS ATTORNEY NARAYAN Y.
BHANDARE

... APPLICANT

Versus

YESHWANT CHANDRAKANT
SARDESAI & 2 ORS.

... RESPONDENTS

Mr. Ashwin D. Bhobe with Ms. Shaizeen Shaikh, Advocates
for the Applicant.

Mr. Ryan Menezes with Mr. Nigel Fernandes, Advocates for
the Respondents.

CORAM: B.P. DESHPANDE, J.

DATED: 3rd AUGUST 2023

ORAL ORDER:

1. The present Revision is filed challenging the impugned order dated 25.11.2022, by which, the learned Trial Court condoned the delay of 1710 days in filing Miscellaneous Civil Appeal, challenging the order dated 01.08.2017 passed in Execution Application No. 17/2009/A. The learned Executing Court by the impugned order awarded civil imprisonment for a

period of 25 days together with attachment of the house, in executing the decree.

2. Heard learned Counsel Ms. Shaikh appearing for the Applicant and Mr. Ryan Menezes for the Respondents.

3. Learned Counsel for the Applicant strongly contended that the impugned order suffers from perversity and illegality as it does not consider the delay from the date of passing of the order and judgment dated 01.08.2017 till the filing of the so called Application for stay on 05.08.2019. She invited the attention of this Court to the Application for stay and also the Application filed for condonation of delay. According to her, both these Applications disclose vague averments with regard to the knowledge of the Respondents qua the impugned order dated 01.08.2017. It is her contention that there is absolutely no discussion on the delay of the initial period till the filing of the Application for stay before the Executing Court.

4. Per contra learned Counsel Mr. Menezes appearing for the Respondents would submit that the Application for stay shows that the Respondents got the knowledge of the impugned order only a month prior to filing of such Application when the Bailiff

visited their house with a warrant. He then submitted that the Respondents were advised to approach the Executing Court by filing the stay Application and therefore, the Respondents were bonafidely litigating before the same Court. The stay Application was filed on 05.08.2019 and it was decided/rejected on 10.02.2020. He then submitted that immediately thereafter, from the month of March 2020 due to the Covid-19 pandemic, the Hon'ble Apex Court as held in **Cognizance for Extension of Limitation in Re, (2022) 3 SCC 117**, suspended the period of limitation for filing the proceedings, which continued till the month of February 2022. He, therefore, submitted that the said period has been rightly considered by the learned Trial Court.

5. The rival contentions fall for determination as under:-
6. The Applicant filed a Regular Civil Suit No. 76/2004 against the Respondents, which was decreed by judgment and decree dated 02.05.2008. Thereafter, the Decree Holder/ Applicant preferred Execution Application No. 17/2009/A as according to the Applicant, the decree remained to be executed. After making several efforts since the Respondents were disobeying the orders, an Application was filed by the Decree Holder/Applicant wherein the Judgment Debtors [Respondents herein] filed a reply.

7. After hearing the learned Counsel for the respective parties, the learned Executing Court passed an order on 01.08.2017. The operative part of the said order reads thus:

“The Judgment Debtors are awarded civil imprisonment for a period of 25 days. Their house stands attached. If the Judgment Debtor does not fill up the trench, the Decree Holder may apply for the house to be sold and compensation will be awarded to the Decree Holder.”

8. Since the Executing Court directed that the Judgment Debtors be awarded civil imprisonment for a period of 25 days, a warrant was issued to execute such an order. However, the fact remains that the Respondents avoided such a warrant.

9. An Application was filed for grant of stay of the order dated 01.08.2017 by the Respondents before the Executing Court, which is dated 05.08.2019. On perusal of this Application, it shows that the same is signed by the Advocate for the Judgment Debtors. There is no verification or even affidavit of the Judgment Debtors attached to such Application. Thus, the contents of the said Application cannot be looked into as averments on behalf of the Respondents. Specifically in paragraph 6, it is claimed that in the last month when the Bailiff visited the house with the arrest

warrant, the Judgment Debtors got the knowledge. These averments ought to have been either verified by the parties themselves or affirmed for the purpose of considering the date of knowledge. In the absence of such verification and affirmation, the averments made in the Application for stay cannot be looked into.

10. Learned Counsel Mr. Menezes fairly submitted that he has no material to show that the Respondents were not aware of the execution proceedings. It is rightly so because the order dated 01.08.2017 passed in Execution Application No. 17/2009/A itself, shows that the Respondents were represented by an Advocate before the Executing Court. Thus, there is absolutely no material to show that the Respondents were not aware of the impugned order dated 01.08.2017.

11. The contention of learned Counsel Mr. Menezes that the Respondents were litigating bonafidely before the Executing Court by filing an Application for stay could be considered under Section 14 of the Limitation Act cannot be accepted. First of all, such an aspect has not been pleaded in the Application for condonation of delay filed before the learned Trial Court. A perusal of such an Application would clearly go to show that the Respondents were trying to project that they got knowledge of the impugned order

only when the Bailiff came to the site with a warrant without disclosing the date of the visit of the Bailiff. This itself is contrary to the fact that the Respondents were duly represented by an Advocate before the Executing Court.

12. The learned Trial Court completely lost sight of this fact and only considered the period from 05.08.2019 when the stay Application was filed. Admittedly, the Application for stay was filed on 05.08.2019, but as discussed earlier, the contents of it as true to the knowledge with respect to the said period was not verified or affirmed by the parties. Filing such an Application with the signature of the Advocate is not at all sufficient. Again, this aspect has been completely ignored by the Trial Court.

13. No doubt due to Covid-19 pandemic, the period of limitation was suspended from March 2020 till February 2022. However, the Respondents were duty bound to explain the delay in filing the Appeal which starts from the expiry of the period of Appeal, from the date of the impugned order till filing of the stay Application dated 05.08.2019, which is more than one year. There are absolutely no averments in the Application for condonation of delay that the Respondents were not aware of the impugned order.

It is also not disclosed that their Advocate did not inform them about the said order.

14. In light of the above observations, the impugned order needs to be quashed and set aside as it failed to consider the period prior to the pandemic and more particularly, prior to the filing of the stay Application. Even otherwise, only filing the Application for stay would not exclude the period of limitation for filing the Appeal thereby challenging the impugned order. Thus, the Revision succeeds and the following order is passed:

O R D E R

- (a) The Revision stands allowed.
 - (b) The impugned order dated 25.11.2022 in Civil Miscellaneous Application No. 46/2022 is hereby quashed and set aside.
 - (c) Civil Miscellaneous Application No. 46/2022 on the file of the learned Trial Court stands dismissed.
 - (d) Parties shall bear their own costs.
15. The Civil Revision Application stands disposed of.

B.P. DESHPANDE, J.