

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1082/2016

1. MR N.M.H. BEEDIWALE,
r/o House No.96, Gopal Naik
Chawl, Sasmollem-Baina, Vasco-
Da-Gama (since deceased
through his legal representatives)

1(a) MR NADEEM
BEEDIWALE, s/o Mr N.M.H.
Beediwale, aged 38 years, r/o
House No.96, Gopal Naik Chawl,
Sasmollem-Baina, Vasco-Da-
Gama and his wife

1(b) MRS SAMEERA
BEEDIWALE, w/o Mr Nadeem
Beediwale, aged 33 years, r/o
House No.96, Gopal Naik Chawl,
Sasmollem-Baina, Vasco-Da-
Gama.

... PETITIONERS

Versus

TULSIDAS G. NAIK, s/o Mr.
Gopal Naik, major of age, r/o
H.No.289/G, Krishna Kunj,
Chicalim, Goa.

... RESPONDENT

Mr. Vibhav Amonkar, Advocate U/LAS for the Petitioners.
Mr. Gaurish Agni with Mr K. Kavlekar, Advocates for the
Respondent.

CORAM: M. S. SONAK, J.

DATED: 16th February 2023

ORAL JUDGMENT:

1. Heard Mr Vibhav Amonkar for the petitioners and Mr Gaurish Agni for the respondent. Mr Nadeem Beediwale, petitioner no.1(a), was present in the Court and also interacted with the Court.

2. Rule. The rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

3. The challenge in this petition is to the Judgment and Order dated 12.10.2016 made by the Appeal Court dismissing the petitioners' application for condonation of delay of about 14 months in instituting an appeal against the Judgment and Order dated 11.05.2015 ordering petitioners' eviction from the suit premises. The eviction was ordered on the ground of non-payment of rent. The Petitioners' defence was that the rent of ₹400/- was regularly paid. But some dispute arose when the landlord demanded ₹600/- and refused to accept the contractual rent.

4. In the application for condonation of delay, petitioner no.1(a) had pleaded that he had undergone an eye operation. He also claimed that his advocate had been instructed to institute an appeal. Further, there was a miscommunication because the petitioners were under the impression that such an appeal was already instituted and summons from the Appeal Court would be served upon them. Besides, it is also pleaded that the petitioners were lay persons unaware of the legal niceties. There are also some pleadings about obtaining certified copies of the impugned Order and how this added to the delay.

5. The application for condonation of delay was opposed, and the Appeal Court, by the impugned Order, has declined to condone the delay.

6. One of the reasons why the Appeal Court declined to condone the delay was because the petitioner produced no medical certificate about the eye operation along with the application for condonation of delay. Mr Amonkar points out that the medical certificate has been produced along with this petition.

7. This certificate has been issued by the District Hospital at Dharwad and is dated 23.06.2015. The Senior Specialist of the

District Hospital, Dharwad, has signed the certificate. Since this is a certificate issued by the Government Hospital, the same can be considered even at this stage in the peculiar facts of the present case. There was a reference to the eye surgery on 08.05.2015 at the District Hospital at Dharwad, Karnataka. The affidavit of Mr Nadeem Beediwale also backed the application.

8. Considering the application for condonation of delay, I believe the sufficient cause was shown. Ultimately, in such matters, it is not the delay's length but the cause's quality that matters. Further, there may have been some lapse by the petitioners in not being diligent in pursuing the appeal. However, as was observed by the Hon'ble Supreme Court in *N. Balakrishnan vs M. Krishnamurthy – (1998) 7 SCC 123*, in every case of delay, there can be some lapse on the part of the litigant concerned. However, that alone is not enough to turn down his plea and shut the door against him. If the explanation does not smack of mala fides or is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor.

9. Further, the Hon'ble Supreme Court held that if the overall conduct of the appellant does not, on the whole, warrant denouncing him as an irresponsible litigant, the Court must be

liberal in construing sufficient cause. However, the Court has also held that while condoning delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and would have also incurred quite large litigation expenses. Therefore, it would be a salutary guideline that when courts condone the delay due to laches on the applicant's part, the Court shall compensate the opposite party for his loss.

10. Mr Agni, the learned counsel for the respondents, pointed out that from 11.05.2015, i.e. the date of the eviction order, the petitioners have not bothered to pay any rent. Mr Amonkar and Mr Beediwale stated that parties inducted now in adjacent premises are paying approximately ₹2,500/- per month rent. They point out that the premises are old and the landlords are not carrying out any repairs to the same. Mr Amonkar and Mr Beediwale submitted that Mr Beediwale is not a Government servant as alleged in the eviction application but manages his livelihood as a small-time professional cricket commentator operating on weekends on the local grounds.

11. The Trial Court's Order dated 11.05.2015 had directed the petitioner to pay ₹27,800/- arrears. Considering the law laid down in *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd. - (2005) 1 SCC 705* and *Heera Traders vs Kamla Jain – 2022*

SCC OnLine 220, once there is an eviction decree, the petitioners will have to deposit some suitable compensation during the pendency of appeal against the eviction order. The petitioners cannot insist upon continuing on the premises by paying only the contractual rate.

12. Therefore, for the period between May 2015 and today, the petitioners must pay compensation of at least ₹1,000/- per month on a conservative basis. Furthermore, together with the arrears as directed by the Trial Court and the amount now determined again, on a very conservative basis, the petitioners must pay an amount of ₹1,00,000/- to the respondent if the delay is to be condoned and the petitioners are to be allowed to pursue their appeal against the eviction order dated 11.05.2015.

13. Further, during the pendency of the appeal before the appellate authority, the petitioners must deposit before the Appeal Court compensation of ₹2,500/- each month without fail. To benefit the parties, the Appeal Court can be directed to dispose of the appeal as expeditiously as possible.

14. Typically, the compensation amount must be deposited and not directly paid to the landlord pending the appeal. Accordingly, insofar as the deposit of ₹2,500/- per month is concerned, such

amount can be deposited. However, the amount between 11.05.2015 and today is computed at ₹1,00,000/-, which includes the arrears of ₹27,800/-. The same will have to be directly paid to the landlords. This is more so because if the delay is to be condoned, then the landlords must be suitably compensated. The delay was certainly not for any reason attributable to them. In this manner, the interests of both parties would be balanced to the extent possible.

15. Mr Nadeem Beediwale, present in the Court, states that he will, without seeking any extension, deposit ₹1,00,000/- before the Appeal Court within one month from today. This statement is accepted. Mr Nadeem Beediwale is also informed that the condonation of delay will be subject to such deposit, which means that if he fails to deposit this amount before the Appeal Court within one month, then even this petition will be deemed to have been dismissed without any further reference to this Court.

16. Mr Nadeem Beediwale further states that once the appeal is restored, he will deposit every month ₹2,500/- before the Appeal Court on or before the 10th of each succeeding month. This deposit will continue until the pendency of the appeal, and the

amount deposited will abide by the final orders in the appeal. Therefore, even this statement is accepted.

17. Based upon the above factors cumulatively considered, the Appeal Court's impugned Order dated 12.10.2016 is set aside. Accordingly, the petitioners' application for condonation of delay is allowed subject to the above condition of a deposit of ₹1,00,000/- before the Appeal Court within one month from today. Once this amount is deposited, the respondents-landlords will have the liberty to withdraw this amount unconditionally.

18. The Appeal Court should then consider the appeal on merits subject no doubt to the appellant depositing the above amount of ₹1,00,000/-. The Appeal Court should endeavour to dispose of the appeal as expeditiously as possible and, in any case, within a maximum of eight months from the parties filing an authenticated copy of this Order. Accordingly, the parties are to appear before the Appeal Court on 20.03.2023 at 10.00 a.m. and file an authenticated copy of this Order.

19. The amount of ₹2,500/- that Mr Nadeem Beediwale will deposit before the Appeal Court shall remain deposited or invested. This amount is to abide by the final orders in the appeal. Since a direction is given to deposit this amount, it is

understood that during the pendency of the appeal, the impugned Order of eviction dated 11.05.2015 will not be executed. Further, Mr Beediwale is directed to maintain the status quo in the sense that he shall not induct any third parties or create any third party rights in the suit premises.

20. Once again, it is clarified that if the petitioners fail to deposit ₹1,00,000/- within one month from today before the Appeal Court, this petition will be deemed dismissed without further reference to this Court. The respondents can then proceed with their execution proceedings which are already filed, or file fresh execution proceedings as they may consider appropriate.

21. This petition is disposed of in the terms above. Accordingly, there shall be no order for costs.

22. The Court records gratitude to Mr Amonkar. However, the Legal Services Authority must pay his fees in terms of the rules.

M. S. SONAK, J.

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