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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 314 OF 2022

Desai Engineering

.. Applicant
(Orig. Opponent No.3)

Versus

Vinodkumar R. Moza and Ors.

.. Respondents

-
- Mr. Rahul Kashid i/by Mr. Rohit S. Gangawane, Advocate for Applicant.
 - None for Respondents.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 24, 2023.

P.C.:

1. Heard Mr. Kashid, learned Advocate appearing for the Applicant.

2. The Civil Revision Application takes exception to the Judgment dated 16.11.2021 passed below Exhibit 123 in MA No.136 of 2016 by the learned Trial Court and Application seeking condonation of delay of six years in filing the Application for setting aside the decree under Order IX Rule 9 of the Code of Civil Procedure, 1908 (for short “**CPC**”) seeking restoration of Special Civil Suit No.634 of 2006 which came to be dismissed on 02.02.2009. The said Suit is filed by the Plaintiff seeking cancellation of sale deed executed between the parties.

3. Admittedly, the address of Applicant is that he is a resident of Shrinagar, Kashmir. The principal Suit was filed before the learned Civil Judge Senior Division in Pune and was heard from time to time between 14.10.2008 and 02.02.2019. The Plaintiff had appointed an Advocate to represent him. The reasons given for the delay in filing the Application seeking restoration have been given by the Plaintiff in his Application which has been noted by the learned Trial Court in paragraph No.9 of the impugned order.

4. The Plaintiff was admittedly not residing in Pune and intermitently visiting Pune and in so far as the delay is concerned, he has given the details of his remaining away from Pune and more specifically abroad between 25.10.2006 and 16.09.2015 by furnishing all such details of dates and the places.

5. The Applicant was predominantly dependant on his Advocate who represented him in the learned Trial Court. The Application was resisted by the Petitioner herein before the learned Trial Court on the ground that the plea taken by the Plaintiff ought not to be considered as the delay was not explained satisfactorily.

6. Record indicates that Defendant No.2 is the relative of Plaintiff, but he had passed away in the year 2012. It is noted that the Plaintiff examined himself as AW-1 in support of his case to explain the delay in filing the Application seeking restoration of the dismissed

Suit. Exhibit-96 is the proceeding recording the examination and cross-examination of the Plaintiff. That apart, Petitioner Plaintiff also produced substantial documents being Exhibit-97 to Exhibit-112 in support of his case. The learned Trial Court after considering the entire evidence and the reasons contained in the Application of Plaintiff has passed a reasoned order allowing the condonation of delay of 6 years by returning a finding that the Plaintiff has proved sufficient cause for the delay, and has led evidence to prove the same which testimony has not been rebutted by the opponents.

7. Perusal of the order dated 16.11.2021 leaves no doubt in my mind that the said order has been passed with complete application of mind by the learned Trial Court in allowing the condonation of delay in favour of the Plaintiff. The said order does not call for any interference and is sustained.

8. Civil Revision Application is dismissed.

[MILIND N. JADHAV, J.]

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