



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.195 OF 2023

Naresh Gopaldas Pitroda

... Applicant.

Versus

Smt. R.G.Pitroda (deceased), through
Smt.Kusumkumari P. Sath (deceased), through
Mahendra P. Sath and Ors.

... Respondents.

Mr. Chirag Gandhi, Advocate for the Applicant.

Mr. Shravan M. Vyas, Advocate for the Respondent No.4.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : DECEMBER 06, 2023.

P. C. :

1. The challenge in the Petition is to the order dated 13th October, 2022 passed by the Appellate Court rejecting the Appeal filed against the order passed in MARJI Application rejecting the applicant's application for setting aside the ex-parte judgment and decree dated 15th February, 2003.

2. The undisputed position is that RAE Suit No.3396 of 1986 was instituted by the Respondent-Plaintiff seeking a decree of eviction against the mother of the Applicant (since deceased). The suit summons was served upon the defendant on 7th September, 1988. In the year 1997, the suit summons in the amended plaint was

served upon the defendant and neither the *vakalatnama* was filed nor the written statement was placed on record.

3. The suit proceeded ex-parte and was decreed ex-parte vide judgment and decree dated 15th February, 2003. Subsequently, execution proceedings were taken out and on 29th September, 2011, the notice of amendment application in the execution application was served upon the Applicant. Thereafter, the MARJI Application was filed which came to be rejected by the order of the trial Court dated 23rd June, 2017 and the Appellate Authority upheld the findings of the trial Court.

4. Heard Mr.Gandhi, learned counsel for the Applicant, Mr. Vyas, learned counsel for the Respondent No.4.

5. Learned counsel appearing for the Applicant submits that the ex-parte judgment and decree came to be passed against the Applicant due to fault on the part the Advocate who despite being briefed in the matter failed to appear before the trial Court and conduct the proceedings. He further submits that he acquired knowledge about the ex-parte judgment and decree being passed only upon the notice of amendment in the execution application being served upon him and thereafter, he contacted the office of the Advocate and he came to know that the Advocate had expired on 6th

January, 2008. He submits that the Applicant is a poor person and as such, indulgence may be shown by this Court and the ex-parte judgment and decree be set aside.

6. *Per contra*, learned counsel appearing for the Respondent submits that the Applicant had knowledge about the proceedings inasmuch as, in the year 1988, the suit summons was served and again in the year 1997, the summons in the amended plaint was served. He further points out that the suit is decreed on the ground of arrears of rent and till date, the arrears have not been paid. He further submits that in respect of another tenant the same ground as regards the same Advocate was taken for setting aside ex-parte judgment which came to be rejected and the rejection has been upheld upto this Court.

7. Considered the submissions.

8. It cannot be disputed that the Applicant had knowledge of the proceedings instituted seeking decree of eviction against him. Although it is stated that he had engaged an Advocate in the matter, there is no pleadings to indicate that after engaging the advocate the Applicant was continuously in contact with his advocate to ensure that the proceedings are being handled properly by the Advocate. Apart from the duty of the Advocate to represent the client in the

proceedings, it is also necessary for the litigant to be diligent and ensure that proper instructions are given to the advocate, so that the proceedings can be defended competently by the Advocate.

9. In the present case, there is not even a whisper in the application that the Applicant was in constant touch with the Advocate and that it was advocate who failed to take proper steps. The summons was served in 1988 and again in 1997 and as such, it cannot be said that the suit was likely to have gone in cold storage and the Applicant has lost of track of the suit. There is no single averment in the application that after the service of the summons, he had contacted his advocate to seek information as regards the progress of the proceedings.

10. The admitted position is that the arrears of rent are in the tune of Rs.38,425.30 ps. It appears that the Applicant was neither paying the rent to the landlord nor was diligently prosecuting the proceedings. As pointed out by the learned counsel for the Respondent that in the identical fact situation, concerning the same Advocate this Court has upheld the decision of dismissal of application for setting aside the ex-parte judgment and decree. I see no reason to take a different view in the matter as especially when there is no material to demonstrate that the Applicant was diligent in

prosecuting the proceedings. For an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 to be allowed, it is necessary for the litigant to demonstrate that he was prevented by any sufficient cause from participating in the proceedings. In the present case, apart from blaming the advocate there is nothing to show that Applicant was diligent in defending the proceedings and as such the reason put forth by the Petitioner cannot constitute sufficient cause for setting aside ex-parte decree. Law comes to aid of the litigant who is diligent in prosecuting/defending the proceedings and litigant who is negligent cannot seek any indulgence on the ground of sympathy.

11. Apart from this fact, it needs to be noted that the suit for eviction is of the year 1986 and the decree had already been put into execution in the year 2011. Civil Revision Application is of the year 2023 and despite thereof, the landlord is unable to reap the benefit of the decree. To show any indulgence to the Applicant would result in causing severe injustice to the landlord, and as such, I am not inclined to interfere with the impugned order.

12. In light of the above, Revision Application stands dismissed.

(Sharmila U. Deshmukh, J.)