

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO.14865 OF 2023

Tarun Bisht ...Petitioner.

V/s.

Patcia Lopes ...Respondent.

Ms. Isha Rakesh Singh i/b. Mr. Akhil Gurwada for the Petitioner.

Mr. Prakkash Rohira for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 11th DECEMBER, 2023.

P.C.:-

1. Heard Ms. Isha Rakesh Singh for the Petitioner and Mr.

Prakkash Rohira for the Respondent.

2. At the outset learned counsel appearing for the respondent raised objection about maintainability of the petition on the ground that the prayers sought are under Article 226 of the Constitution of India. Upon being confronted with the maintainability issue, learned counsel for petitioner submits that amendment would be carried out in the prayer clauses. Amendment is permitted. Amendment be carried out forthwith.

3. The challenge in the petition is to the orders dated 14/6/2022 and 14/3/2023 rejecting the petitioner's Application seeking restoration of the Revision Application which was filed against the order of the Competent

Authority on ground of non-prosecution. Appellate Authority has noted that the hearing was held between 24/3/2022 to 14/6/2022 and the petitioner was continuously absent on 24/3/2022, 25/4/2022 and 14/6/2022. As against the order of dismissal for non prosecution passed on 14/6/2022, revision application was filed under Section 44 of the Maharashtra Rent Control Act 1999 for restoration which came to be dismissed on 14/3/2023.

4. Learned counsel appearing for the petitioner submits that the dismissal has occurred due to the fault of the erstwhile advocate of the petitioner. He would further submit that the petitioner has shifted to Delhi and as such has entrusted the matter to the advocate who did not attend the hearing and as such order of restoration has been passed. In support he relies upon in the decision of the Apex Court in the case of ***Rafiz and Anr. vs. Munshilal and Anr., Civil Appeal No.1415/1981.***

5. *Per contra*, learned counsel appearing for the respondent in support of her objection as to maintainability to the petition has relied upon the decision of ***Radhey Shyam and Ors. vs. Chhabi Nath and Ors., Civil Appeal No.2548/2009.*** She would further submit that no relief ought to be granted to the petitioner as Application was rejected in June 2022 and thereafter when the execution was filed, the Application for restoration was

moved and as such on the ground of delay itself the petition is required to be dismissed.

6. Considered the submissions and perused the record.

7. Upon repeated query by this Court as to whether cost will be paid by the petitioner for restoration of the Application, learned counsel for the petitioner has expressed his inability to pay costs. As this Court was not inclined to restore the application without the respondent being compensated for the loss of the time in proceeding with the execution proceedings, learned counsel for petitioner submitted that appropriate cost may be imposed.

8. Reason put forward by the petitioner for non attending the matter is that the advocate had not appeared on the dates of hearing before the Revisional Authority. To put the blame squarely on the shoulders of the advocate is not acceptable. Even if the matter is entrusted to the advocate, it is bounden duty of the litigant to keep in constant touch with the advocate and ensure that appropriate instructions are given and that the advocate attends the matter and if it is found that the advocate is unable to attend the matter for any reason whatsoever, the litigant is under an obligation to take appropriate steps to ensure that the proceedings are defended properly. In the

present case, the petitioner is laying the blame on the shoulders of the advocate and there is no whisper in the Application that there was constant follow up with the advocate and as such there is no default on their part.

9. Although opposed by learned counsel for respondent, the fact needs to be noted that Revision Application has been dismissed for non prosecution and not on merits and as such in the interest of justice it is necessary that the decision on merits is arrived at by the Revisional Authority. Revisional Authority has not found the non attendance of the advocate as a genuine reason. However as indicated above the reason given could not be faulted with as the Application has been dismissed for non prosecution.

10. In view of the above, the petition is allowed. The impugned order dated 14/6/2022 and 14/3/2023 is quashed and set aside subject to payment of cost of Rs.25,000/- to be paid by the petitioners to the respondents within a period of one week from today.

(SHARMILA U. DESHMUKH, J.)