



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL REVISION APPLICATION NO.171 OF 2024**

Mohammad Azim Shaikh Akbar
Through its Power of Attorney,
Shaikh Aamir Azim
age: 37 years, Occ. Business,
R/o. Plot No. D-40 MIDC,
Rameshwar Colony, Mehrum
Dist. Jalgaon

..Applicant
(Orig. Defendant No.1.)

Versus

1. Rajmudra Real Estate Pvt. Ltd.
Registered office 1858
Bldge. No.34 Kher Nagar,
Near P.F. Office,
Bandra E, Mumbai – 400005,
Branch Office Khandesh Mill Main Gate,
Station Road, Jalgaon Ta. & Dist.
Jalgaon through its Director.
2. Balaji Travels,
Through its Proprietor, Shri. Dilip Zawar,
Age- Major, Occ- Business,
R/o. Balaji Travels, Neri Naka, Jalgaon,
Ta. & Dist. Jalgaon.

..Respondents
(Respondent No.1 is Orig. Plaintiff
and R-2 is defendant no.2 in suit.)

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Mr. Hanmant Patil h/f Mr. A. M. Pawar, Advocate for the
Applicant.

Mr. S. S. Bora, Advocate for Respondent No.1.

...
**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 20th DECEMBER, 2024.**

ORDER:-

1. The applicant/original defendant no.2 takes exception to
order dated 13.09.2024 passed by District Judge-1, Jalgaon in
Miscellaneous Civil Application No.259/2024, by which prayer of
applicant to condone the delay of 2537 days caused in filing Appeal

against eviction decree passed in Regular Civil Suit No.150/2014 by Civil Judge Junior Division, Jalgaon has been rejected. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).

2. The respondent no.1/original plaintiff instituted Regular Civil Suit No. 150/2014 under Section 16(1)(a)(ii) of the Maharashtra Rent Control Act, 1999, seeking eviction of defendant no. 1 from the suit premises situated at Khandesh Mill Shopping Complex, Building No. 9, bearing Shop No. 111/B, as specifically described in paragraph no.1 of the plaint. In response to the suit summons, defendant no.1 appeared but failed to file a written statement or contest the suit. Consequently, the Trial Court decreed the suit vide judgment and order dated 29.07.2017, directing defendant no.1 to vacate possession of the suit premises within a period of four months. Defendant no.1 filed an appeal before the District Judge, Jalgaon, along with Miscellaneous Civil Application No. 259/2024, seeking to condone the delay of 2537 days in filing the appeal. The learned District Judge rejected the application vide order dated 13.09.2024, which is impugned in this Civil Revision Application.

3. Mr. Patil, learned Advocate appearing for the applicant/original defendant no.1, submits that although defendant no.1 was served with the suit summons and engaged an Advocate,

he could not participate in further proceedings due to ill health. By inviting attention to the medical test reports of 30.09.2011, Mr. Patil submits that defendant no.1 was diagnosed with a serious ailment and was continuously under medical supervision. Consequently, defendant no.1 could not instruct his Advocate or participate in proceedings before the Trial Court. Mr. Patil further submits that Trial Court, after recording plaintiff's evidence, decreed the suit in 2017, but application for execution of the decree has been filed in 2024, and it was only upon receiving notice of this execution defendant no.1 became aware of the decree, thus delay in filing appeal is unintentional. Mr. Patil further submits that decree passed by the Trial Court is unsustainable in law and that defendant no.1 has a strong case on the merits.

4. Per contra, Mr. Bora, learned Advocate appearing for respondent no. 1/plaintiff, submits that delay of 2537 days is inordinate. The explanation offered does not constitute sufficient cause. In fact, reasons given for delay are not supported by documentary evidence justifying length of the delay. He, therefore, urges Court to uphold the order passed by the learned District Judge.

5. Having considered submissions advanced and after going through the record tendered into service, it can be gathered that

Regular Civil Suit No.150/2014 was instituted for recovery of possession and mesne profit. Defendant no.1 was duly served with the suit summons and appeared through his Advocate. However, neither written statement was filed nor had defendants participated in further suit proceedings. The Trial Court, based on the plaintiff's evidence, accepted his case and decreed the suit. Admittedly, the appeal and Miscellaneous Civil Application No.259/2024 have been filed only when the execution of the decree reached its final stage. The delay of nearly seven years is sought to be explained on the basis of medical reports that suggest defendant no.1 suffered ailment starting in September 2011 i.e. three years before institution of suit. However, documentary evidence does not indicate that defendant no.1 suffered prolonged hospitalization or that participation in the proceedings in trial was impossible for him after institution of the suit.

6. Be that as it may, the suit was decreed in 2017. This Court would see if defendant no.1 was prevented by sufficient cause from preferring an appeal until 2024. The records show that on 19.05.2017 i.e. two months before the decree, defendant no.1 was hospitalized at Jalgaon for a perianal abscess until 22.05.2017. Subsequently, pathological test reports dated 05.09.2018, 21.05.2020, and 12.08.2024 have been submitted on record. However, evidence do not indicate that defendant no.1 suffered

from a continuous ailment from 2017 to 2024 that prevented him from contacting his Advocate or checking status of the suit. It is only when possession warrant was issued, an attempt is made to create obstacle in execution of decree by filing belated Appeal. The learned District Judge has considered all the relevant aspects of the matter and rejected the application vide impugned order dated 13.09.2024.

7. No infirmity or jurisdictional error can be found in the impugned order.

8. Consequently, Civil Revision Application stands rejected.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/December-2024