

Meena

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.493 OF 2023**

Shri Krishna Jagannath Duple ... Petitioner

V/s.

Shri Dudhappa Chandrappa Sajane ...Respondent

Ms. S. Joshi , Advocate for the Respondent.

CORAM: BHARAT P. DESHPANDE, J

DATED: 24th January, 2024

ORAL ORDER:

1. None present for the petitioner.
2. Heard Ms. S. Joshi, learned Counsel for the respondent.
3. Vide order dated 28/11/2023, this Court passed the following order:

“1. After hearing the matter for some time, Mr. Arjun Naik appearing for the Petitioner submits that the Petitioner is ready and willing to vacate the suit premises and he is also ready and willing to give an undertaking to that effect.

2. The Petitioner who is present in person furnished an undertaking to this Court stating that he is ready and willing to vacate the suit premises on or before 15.01.2024.

3. Mr. Joshi appearing for the Respondent agrees for such undertaking given by the Petitioner. Mr. Joshi submits that the

other reliefs granted by the Trial Court with regard to recovery of arrears of rent will be separately taken up in execution proceedings and the same shall not be considered in this Petition.

4. Mr. Arjun Naik appearing for the Petitioner, on instructions from the Petitioner, who is present in the Court, submits that the undertaking be accepted as far as vacating the suit premises is concerned and handing over it to the Respondent on or before 15.01.2024.

5. Considering the dispute between the parties and the fact that the Respondent is around 89 years old, the undertaking given by the Petitioner stands accepted and the same is taken on record and marked 'X' for identification. Accordingly, the Petitioner is directed to hand over the vacant possession of the suit premises to the Respondent on or before 15.01.2024. All other contentions of the Respondent with regard to recovery of arrears of rent are kept open.

6. The matter is now posted on 22.01.2024 for submitting a compliance report.”

4. Ms. Joshi appearing for the respondent would submit that as per the undertaking given by the petitioner to this Court on 28/11/2023, the suit premises have been handed over to the respondent on 15/01/2024.

5. The respondent filed a suit bearing Regular Civil Suit No.171/2013/D for recovery of possession and eviction of the defendant/petitioner herein which was decreed by judgment and decree dated 31/12/2019.

6. The present petitioner thereafter filed an appeal against such judgment and decree, along with an application for condonation of delay under Section 5 of the Limitation Act. The learned First Appellate Court rejected the application for condonation of delay vide impugned order dated 21/07/2023 in Civil Misc. Application No.93 of 2020, which is challenged in the present petition.

7. However, since the petitioner filed undertaking and now handed over the possession of the suit flat on 15/01/2024, nothing survives in the present petition. Even otherwise the maintainability of the petition was required to be considered since rejection of condonation of delay in filing an appeal amounts to rejection of appeal itself. Thus the remedy was to file the Second Appeal before the appropriate Court.

8. Be that as it may, since the premises are already handed over and the proceedings for recovery of arrears of rent are already going on before the concerned Court, the present petition stands disposed of. The respondent is at liberty to consider such proceedings for recovery of arrears which are already pending before the concerned Court.

9. The petition stands disposed of in the above terms.

BHARAT P. DESHPANDE, J

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