

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

WRIT PETITION NO.17412 OF 2024

Swatik Enterprises

....Petitioner

V/S

Prabhavati Manohar Kumthekar

....Respondent

Mr. Bhavin Gada a/w Ms. Aanchal Singhoria and Mr. Deepak Shukla i/b M/s. BNS Legal *for the Petitioner.*

Mr. Shamrao B. Gore *for Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATE : 18 DECEMBER 2024.

P.C.:

1. The challenge in the present Petition is to the order dated 10 October 2024 passed by the District Judge-4, Kolhapur allowing Civil Miscellaneous Application No.186 of 2021 and condoning the delay in filing the Appeal against judgment and decree dated 21 January 2020 passed by 6th Joint Civil Judge Junior Division, Kolhapur in Regular Civil Suit No.17 of 2017.

2. I have heard Mr. Gada, the learned counsel appearing for the Petitioner and Mr. Gore, the learned counsel appearing for the Respondent.

3. It appears that the suit was instituted by the Petitioner/Plaintiff seeking eviction of the Respondent-tenant on

the ground under section 16(1)(i) of the Maharashtra Rent Control Act, 1999 (**the MRC Act**). The fact that eviction was sought on the ground of demolition of the structure and erection of new building, provisions of sub-section (6) of section 16 of the MRC Act would kick in which mandates provision of alternative premises in the newly constructed building consisting of same carpet area. It appears that the Trial Court has in fact ensured that the Respondent-Tenant is put back in possession of the premises having equivalent carpet area in the newly constructed building. It appears that the Trial Court has gone step further (though not required under provisions of section 16(6) of the MRC Act) to direct the Plaintiff to arrange for transit accommodation during completion of construction.

4. Mr. Gada has invited my attention to the photographs of the site and it appears that construction of the building is complete. According to Mr. Gada, the Petitioner is unable to secure occupancy certificate in respect of the new building and put the same to use on account of structure of the Respondent-Tenant standing on the way leading to the parking.

5. He would submit that the Petitioner has already arranged for transit accommodation for the Respondent-tenant and has been paying rent in respect of the said accommodation. Be that as it may. The Petition challenges order condoning the delay in filing of the Appeal. It appears that the decree was passed on 21

January 2020 and the Appellate Court has taken into consideration suspension of period of limitation during Covid-19 outbreak from 15 March 2020 to 28 February 2022 for condoning the delay. Considering the peculiar facts and circumstances of the case, I am not inclined to interfere in the discretion exercised by the Appellate Court condoning the delay in filing the Appeal. However at the same time pendency of the Appeal cannot be used by the Respondent-tenant for delaying completion of the project. It appears that the Respondent-tenant is armed with an order staying execution of the proceedings passed by this Court on 15 January 2024 in Writ Petition No.13121 of 2023 till decision of the Application for condonation of delay.

6. It appears that though construction of the building is complete, on account of refusal on the part of the Respondent-tenant to handover possession of the suit premises, the occupancy certificate in respect of the building cannot be secured. The Appellate Court would duly consider this aspect and expedite the hearing of the Appeal. The Appellate Court shall make earnest efforts to decide the Appeal as expeditiously as possible, preferably within a period of six months.

7. With the above directions, Writ Petition is **disposed of**.

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by SUDARSHAN
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KATKAM
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(SANDEEP V. MARNE, J.)