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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.15097 OF 2023

IN

CIVIL REVISION APPLICATION (ST.) NO.22070 OF 2023

Union of India, through
Defence Secretary & Ors.

...Applicants

V/s.

Dr.Rustum S. Boyee

...Respondent

Mr.Shriram S. Redij for the Applicants - UOI.

Mr.Sheroy M. Bodhanwalla with Ms.Sakshi Sharma and
Mr.Akash Singh i/b M.S. Bodhanwalla & Co. for the Respondent.

CORAM : RAJESH S. PATIL, J.

DATE : 3RD APRIL, 2024.

P.C. :-

1. The Civil Revision Application is filed by the Defence Ministry through the Union of India, challenging the impugned order passed by the Court of Small Causes, Mumbai in *mesne-profit* Application.

2. There is delay in filing the Civil Revision Application.

Hence, Interim Application No.15096 of 2023 has been preferred by the Union of India.

3. In paragraphs 2 to 8, the reasons for delay have been explained by the Applicants / Union of India For ease of reference, paragraphs 2 to 8 of this Interim Application are reproduced hereinbelow :-

“2. The Applicant states that the Respondent/Ori. plaintiff filed Miscellaneous Appeal for enhancement of Mesne Profit. Even the Applicants also filed miscellaneous appeal challenging the quantum of the main Profit as decided by the Judge, Small Causes Court, Mumbai in the enquiry into Mesne Profit. The Applicants engaged Smt. Milan Ghosh, Government Advocate to represent the Applicants in both the above appeals. The Department was in continuous contact with her regarding the progress of the above appeals. However, she was not responding and did not inform about the status of the both the above appeals.

3. The Applicants state that as the Department was not getting response from its Advocate who was representing the Department in both the above appeals, the Department on 05/04/2023 contacted the registry of the Small Causes, Mumbai to make inquiries about the status of both the above appeals. On such enquiry, it was informed by the registry of Small Causes Court, Mumbai that both the above appeals were disposed of by the Learned Appeal Bench, Small Causes Court, Mumbai by its judgement and order dated 03/03/2022. The Applicants later on

came to know that the advocate representing the department before the Learned Appeal Bench, Small Causes Court, Mumbai was not well and was undergoing treatment for cancer.

4. The Applicants state that thereafter, about 06/04/2023, the Department to Ministry of Law and Justice, Branch Secretary at Mumbai vide letter dated 06/04/2023 and requested for legal opinion in respect of the impugned order dated 03/03/2022. The Ministry of Law and Justice, Branch Secretary Mumbai vide U.O. No. 312/Adv/MUM/2023 dated 26/04/2023 given its opinion and advise to challenge the impugned judgement and order dated 03/03/2022. Therefore, on receipt of the opinion, by Letter DEO/ MUMBAI/ ACQ /NMRL.AMBERNATH/VII/39 dated 11/05/2023 written to the Ministry of Law and Justice, requested to appoint a suitable Central Government Standing Counsel for filing the appropriate proceedings before the Hon'ble Bombay High Court.

5. The Applicants state that by its letter dated 15/05/2023 vide Docket No. 006, the Ministry of Law and Justice appointed Adv. Uma K. Wagle as a Government Counsel to file appropriate proceedings to challenge impugned judgement and order dated 03/03/2022. The Department therefore immediately telephonically contacted the said Government Counsel for handing over the brief of the case along with the supporting documents for preparing Civil Revision Application to challenge the said impugned judgement and order. However, she informed the department that she was not then available for filing the proceedings and she advised this Department to approach the Ministry of law and justice to engage another counsel. Therefore, the said government

counsel was asked to intimate her refusal in writing., Immediately this Department approached the Ministry of Law and Justice for appointment of another Government Counsel. On request of the Department, the Ministry of Law and Justice vide Docket No. 209 dated 19/05/2023 appointed Adv. Priyanka Chavan for filing appropriate proceedings to challenge the impugned judgement and order.

6. The Applicants states that this Department vide letter No. Mr/491/HRG/BG/VII/47 dated 23/05/2023 handed over the brief of the case and supporting documents to Government Counsel and requested her to prepare Civil Revision Application challenging both the orders dated 03/03/2022. On receipt of the papers, the Government Counsel asked the concerned person from the department for instructions and conference. The concerned person from the department held discussion along with ADEO Shri. B. H. Vaghela on 06/06/2023 in the office of the Ld. Government Counsel. Thereafter, again on 26/06/2023 the office representative of the Department again contacted the Ld. Government Counsel and requested her to prepare both the revision applications. However, she showed her inability and requested the Department to contact the Ministry of Law and Justice for appointments of another Government Counsel.

7. The Applicants states that thereafter by letter No. MR/491/HRG/BH/IX/04 dated 27/06/2023 requested the Ministry of law and justice to appoint Government Counsel. The Ministry of Law and Justice vide letter No. uo 164/Adv/LC/Mum/2023 dated 03/07/2023 appointed Standing Government Counsel, Mumbai District for filing present revision application. The Department therefore immediately by

letter dated 04/07/2023 handed over the brief and supporting documents to the Standing Government Counsel. The Standing Government Counsel on 20/07/2023 forwarded the draft of the Civil Revision Application to the department which was forwarded by the Department for vetting. The Standing Government Counsel demanded certified copies of the impugned judgement and order, however as the Department was not having the certified copies. The Department therefore was advised to apply for certified copies of the impugned judgement and order dated 03/03/2022. The certified copy is immediately applied and the same obtained on 01/08/2023.

8. The Applicants state that the draft of the Civil Revision Application was vetted/approval and the same was duly affirmed by authorised signatory on 03/08/2023. Thereafter the same was handed over to the Standing Government Counsel who thereafter filed the same in this Hon'ble Court. Hence there is a delay of 403 days in filing the present Civil Revision Application.

4. Mr.Redij appearing for the Applicants / Union of India submit that the panel counsel, who was handling the matter in the Appellate Court unfortunately fell ill. Hence there was no communication to the Union of India regarding the orders being passed and steps to be taken by the Union of India. He submits that thereafter the Union of India had to take legal opinion on the issue of challenging the impugned judgment and order passed by the Trial Court, so also at least three lawyers had

returned the brief to the Union of India. He submits that thereafter in the shortest possible time, he has preferred the Civil Revision Application along with delay condonation application. He submits that already a sum of Rs.5, 93,45,863/- has been deposited by the Union of India before the Appellate Bench of the Court of Small Causes, Mumbai, without prejudice to the rights and contentions of the Union of India. He submits that the Union of India has very good case on merits and therefore, in the interest of justice, delay of 403 days be condoned.

5. Mr.Bodhanwalla appearing for the Respondent / original landlord submits that the possession of the suit premises has been received by the landlord on 20 November 2002. He submits that the present dispute now is only as regards the *mesne-profits* payable. He submits that there is delay in filing the Civil Revision Application, which has not been explained by the Applicant / Union of India why after the decree which was passed on 3 March 2022, certified copy of the order applied only in the month of July 2022. He submits that the Interim Application for condonation of delay should be dismissed.

6. Mr.Bodhanwalla submits that they have already filed reply opposing the present interim application for delay condonation. He also submitted that the advocate for the Union of India had appeared in the execution application.

7. I have heard both the counsel and have taken into consideration the documents on record.

8. Paragraphs 2 to 8 of the Interim Application, the Union of India has given the explanation for condoning the delay. Most important of the explanation is the reference to lawyer appearing for the Union of India, was not reachable, as she was suffering from 'Cancer'. So also, it has been submitted that being Government body, the Defence Ministry were required to take opinion on the Department of Ministry of Law and Judiciary, in order to challenge the impugned judgment and order. It is also mentioned in the application that apart from the said fact, atleast two lawyers, whose names have been mentioned in paragraphs 5 and 6 had returned back the docket given to them in the present proceedings and also the third lawyer returned back the docket given to them. Thereafter the

present counsel immediately taken steps and filed the present civil revision application along with the application for condonation of delay.

9. In the case of *Shrikant Baburao Paralkar, since deceased & Ors. vs. Shyam Gajanand Purav & Anr.* in Writ Petition No.1970 of 2017, I have condoned the delay in filing Appeal before the Appellate Bench, by considering the ratio laid down by Supreme Court and Bombay High Court in following judgments :-

9.1 Supreme Court in the judgment of *Collector, Land Acquisition, Anantnag and another Vs. Mst. Katji and Others reported in 1987 SC 1353*, has held that :- “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every house’s delay. Every second’s delay ? The doctrine must be applied in a rational common sense pragmatic manner.

9.2 Supreme Court in the case of *S. Ganesharaju (Dead) through Lrs V. Narasamma (Dead) through Lrs* reported in *(2013) 11 SCC 341*, more specifically, paragraph Nos. 12 and

13, of the said judgment held that a liberal construction to the cause of delay should be given. The said paragraphs are reproduced herein below:-

12. The expression “sufficient cause” as appearing in Section 5 of the Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice. Unless the respondents are able to show mala fides in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given go-by.

13. The rules of limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

9.3 Bombay High Court in the judgment of

Kamalbai Narasaiyya Shrimal and Another Vs. Ganpat

Vithalrao Gavare reported in 2007 (1) MH. L.J. 807,

paragraph Nos.13 and 15 has held:-

13. The factual position is manifestly clear on bare perusal of the application for condonation filed by the petitioners before the learned District Judge. The only relevant

statement in the application is thus:-

“ The delay caused in preferring the appeal is of six months. The caused delay is not intentional one. The appellants are poor and helpless persons. If the delay is not conconded appellant may cause irreparable loss which cannot be compensated in terms of money. The suit was for recovery of possession and present appellants are tenants. If the delay is not condoned then appellants will become shelterless.”

15. The expression “sufficient cause” cannot be erased from section of the Limitation Act by adopting excessive liberal approach which would defeat the very purpose of section 5 of the Limitation Act. There must be some cause which can be termed as a sufficient one for the purpose of delay condonation. I do not find any such “sufficient cause” stated in the application and as such no interference in the impugned order is called for.”

10. I have considered the facts of the present proceeding and the law as laid down by Supreme Court and High Court in the above judgments, according to me a case is made out to allow the interim application.

11. Interim application is allowed in terms of prayer clause (a). Interim application is accordingly disposed of.

WITH
CIVIL REVISION APPLICATION (ST.) NO.22070 OF 2023

1. Mr.Redij counsel appearing for the applicant and Mr.Bodhanwalla, counsel appearing for the respondent submit that this matter is only pertaining to the *mesne - profit*. Union of India has deposited the monies with the Appellate Court. They both submit that their clients will try to make an attempt to reach out for amicable settlement. They submit that they will take instructions from their respective clients and inform this Court on the next date of the hearing.

2. Stand over to 17 April, 2024. The matter to come up on board under the caption of 'Settlement'.

(RAJESH S. PATIL, J.)