

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.565 OF 2024

Sudhakar Gudappa Tammne ...Petitioners
Versus

Bhairav Singh Nanhakau Singh And Anr ... Respondents

Adv. G. M. Savagave for Petitioner.

Mr. Aniruddha Sapre i/b. D. B. Savant for Respondent No.1.

CORAM : RAJESH S. PATIL, J.

DATED : 16 FEBRUARY 2024

PC.:

1. The Petitioner/Original Defendant No.1, who has challenged the impugned order dated 3 November 2023 passed in Revision Application No.302 of 2023. R. A. E. & R. Suit No.533 of 2017 was filed by Respondent No.1/Original Plaintiff for eviction under the Rent Act.

2. It is the case of the Respondent no.1 that the suit summons was served on Defendant No.2 on the address of the suit premises. However, the summons could not served on Defendant No.1 (who is the Petitioner herein) as he was not available at the time of service of the summons. According to him, ultimately the

Defendant No.1 was served by pasting. So also a fresh application was made for “Paper Publication”, and after an order allowing the paper publication, a notice was published in the newspaper, and an affidavit of service to that effect was filed. Thereafter, the suit proceeded *ex parte* and a decree was passed accordingly. The Plaintiff thereafter issued a notice before filing of the execution application. The Defendant No.2 was served with the said notice. As far as Defendant No.1 (present petitioner is concerned), the notice was pasted on the suit premises. Thereafter on 20 August 2019 the Defendant No.1 appointed an Advocate who filed on Vakalatnama in the proceedings.

3. Soon thereafter the Defendant No.1 through his Advocate filed an Application under Order 9 Rule 13 of CPC.

4. After the Original-Plaintiff filed their reply to the said application. By an order dated 3 March 2023 the MARJI Application was rejected. The said order was carried in revision before the Appellate Bench. By the judgment and order dated 3 November 2023, the revision application filed by the Petitioner was rejected. And after application was filed to approach this Court by the Petitioner was allowed subject to the Petitioner

depositing a sum of Rs.75,000/-.

5. The Petitioner/Original Defendant No.1 has thereafter filed the present Writ petition.

6. It is submitted on behalf of the Petitioner that the Petitioner is an illiterate person who has studied only upto 2nd standard. He further submitted that the learned Judge of the Small Causes Court has gone into the merits of the case while deciding the delay condonation application. He submitted that the delay is only of 458 days. He submitted that the Petitioner was on *bona fide* belief since all the documents concerning a redevelopment of the suit premises have been entered by way of development agreement with the Petitioner. And the Petitioner also believed this because the SRA also issued documents regarding land on which suit premises is situated.

6. Mr. Aniruddha Sapre, appearing for the Respondent-Landlord has opposed this Application. He submits that the Petitioner was well aware about the proceedings and the suit was filed on the ground of arrears, subletting and *bona fide* requirement.

7. He submits that it is quite clear that the premises were

subletted because on the suit premises summons was served to the Defendant No.2. He also further submits that today when the Bailiff has been to the suit premises in order to execute the decree, some third person was occupying the suit premises. He submitted that there is no reason to interfere with the reasoned order passed by the Court of the Small Causes.

8. Heard. I have gone through the impugned order and the interim application filed for condonation of delay. In paragraph No.9 of the said application, it has been stated that the Petitioner is an illiterate person who has studied upto 2nd standard and he was not aware about the seriousness and consequences of the suit and he believed the words of the developer that except him no one can claim the suit premises. It is further also stated in the said Paragraph that the Petitioner always believed that his premises was protected under the slum rehabilitation scheme and hence the Plaintiff had no right to file eviction proceedings under the Rent Act.

9. It is also been stated that in the said application in paragraph No.8 that the Petitioner is a member of Shantikunj Co-operative Housing Society and the society has addressed a

correspondence to his name in respect of suit premises.

10. Having regard to all there circumstances, according to me, a case is made out to allow this Writ Petition.

11. The Writ Petition is disposed of with following directions :-

(i) The impugned order dated 3 March 2023 passed in MARJI Application No.71 of 2020 and the order dated 3 November 2023 passed in Revision Application No.302 of 2023, by the Appellate Bench of the Small Causes Court, are quashed and set aside.

(ii) The delay in filing the Application for setting aside *exparte* decree is condoned.

(iii) The Small Causes Court to hear the Petition on the Application filed under Order 7 Rule 11. Hearing of the said Application is expedited.

(RAJESH S. PATIL, J.)