

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 25 OF 2024

Mulraj Bhagwandas Kapadia

(Since deceased)

Smt. Minaxi Mulraj Kapadia

(Since deceased)

Ashwin Mulraj Kapadia & Anr.

..... Applicants

VERSUS

Nilesh Ramesh Pritmani & Ors.

..... Respondents

Mr. Jayesh Bhatt for the Applicants.

None for the Respondents.

CORAM: RAJESH S. PATIL, J.

DATE : 18 JANUARY, 2024

P.C. :-

This Civil Revision Application is filed under section 115 of Civil Procedure Code challenging the impugned Judgment and Order dated 7 November, 2023 passed by the Judge of the Court of Small Causes at Mumbai, thereby allowing the MARJI Application, of the Defendant subject to cost of Rs.10,000/- to be paid to the Plaintiff. After payment of the cost the decree dated 16 October 2014, passed in eviction suit will be set aside and the

suit be restored to the original file and for disposal in accordance with law.

2. The present Applicant before this Court is the Original Plaintiff/Landlord. The Plaintiff had filed the original suit against the Defendant under the Maharashtra Rent Control Act, 1999 for eviction. The Defendant had filed their Written Statement. However, the Advocate appearing for the Defendant did not Cross-Examine the Plaintiff Witness. The suit came to be decreed on the basis of the evidence of the Plaintiff on 16 October 2014.

3. The Defendant No.1 and 2 filed MARJI Application 380 of 2015 under the Provisions of Order 9 Rule 13 of Civil Procedure Code, for setting aside Judgment and Decree passed in the Eviction suit. The said MARJI Application was rejected by the Trial Court. Against the rejection of MARJI Application, the Defendant no. 1 and 2 preferred Miscellaneous Appeal No. 326 of 2016 before the Appellate Bench of the Court of the Small Causes. The Appellate bench upheld the order passed by the Trial

Court. Hence, being aggrieved by the Order passed by the Trial Court and the Appellate Court, the Defendant No. 1 and 2 had filed Writ Petition before this Court. This court after hearing the petition allowed the Writ Petition by Order dated 14 May 2020, and directed to rehear the Appeal on its merits.

4. The Misc. Appeal was thereafter heard by the Appellate Bench of the Court of the Small Causes, and the judgment and order passed in MARJI Application No.380 of 2015, was quashed and set aside and the Trial Court was directed to reconsider the MARJI Application.

5. The Plaintiff being aggrieved by the Order passed by the Appellate Bench, filed the Civil Revision Application No.380 of 2023 in this Court. This Court dismissed the Civil Revision Application filed by the Plaintiff by Order dated 23 August 2023.

6. The Trial Court thereafter was to consider the MARJI Application No. 380 of 2015 filed by the Defendants, which

sought setting aside of the decree passed on 15 October 2014 by the Trial Court, which was passed as Advocate appearing for the Defendant did not Cross-examine the witness of the Plaintiff.

7. The Judge of the Court of Small Causes subsequently heard both the parties on Marji Application No. 380 of 2015. And by its Judgment and Order dated 7 November 2023, allowed the MARJI Application filed by the Defendants, thereby setting aside the decree passed by the Trial Court subject to the payment of cost of Rs.10,000/- by the defendant and thereby restored the suit to its file , to be disposed of in accordance with law.

8. Being dissatisfied with the order passed by the court of the Small Causes the Plaintiff have come before this court challenging the said impugned Judgment and Order dated 7 November 2023, passed by the Court of Small Causes, Mumbai.

9. Mr.Bhatt appeared on behalf of the Applicant who made his submissions :-

i. Mr. Bhatt submitted that a false ground of blaming the Advocate has been made by the defendant, which is not a good law as held in the various judgments.

ii. Mr. Bhatt submitted that a party cannot wholly rely upon his Advocate and the progress of the matter is easily available on E-courts App, hence, it cannot be held that the Defendant was not aware about the status and progress about his matter.

iii. Mr. Bhatt submitted that there is no sufficient cause shown by the Defendant to condone the delay and set aside the decree passed. He submitted that defendants were totally negligent and there were no *bonafides* on their part.

iv. Mr. Bhatt submitted that once the

summons are served and the party do not appear, they have to thank themselves for serious lapse on their part.

v. Mr. Bhatt submitted that the decree was passed on 16 October 2014, and the Application for setting aside of the said decree was only filed on 7 May 2015, therefore there is a delay of 203 days.

vi. Mr. Bhatt submitted that it is not only the responsibility that the Advocate appearing on behalf of his client to keep a track of the matter, it is equally the responsibility of the Defendants to continuously attend the case even if the Advocate does not appear.

vii. Mr. Bhatt submitted that there is no explanation about what actually prevented the defendant from attending the matter.

viii. Mr. Bhatt submitted that admittedly the Defendants have not filed any complaint with the Bar Council against their Advocate, for not appearing in the present proceeding.

ix. Mr. Bhatt therefore submitted that hence the impugned judgment and order requires to quashed and set aside and the decree passed requires to be upheld.

10. I have heard Mr. Bhatt and with his assistance I have gone through the documents on record.

11. It is matter of record that the Written Statement was filed by the defendants and after the plaintiff filed his affidavit of evidence, the advocate appearing for the defendant should have cross - examine the witness of the plaintiff. It seems that the advocate appearing for the defendants remained absent.

12. The suit premises is a shop admeasuring 150 sq.ft. The Trial Court decreed the suit on 16 October 2014, as there was a failure on the part of Advocate appearing for the defendants to Cross - examine the plaintiff witness.

13. It is the case of Defendants that he was frequently travelling for business purpose and he was entirely depended upon his Advocate, to inform him about the status of the matter. The defendants have came up with a case that their lawyer had promised them whenever required she will contact them, however she did not contact them and inform them about the status of the matter. So also the defendant came with a case that there was some problem with the telephone number of their Advocate and whenever they tried to call her they were not able to get any response. It is the further the defendant's case that they became aware of the decree being passed when the show cause notice was served upon them of the Execution Application. Immediately thereafter, they tried to contact their earlier Advocate however, the whereabouts of their earlier advocate was

not known since, she had left her office premises where they had met her. Hence, the defendant approached their present advocate and through their present advocate they obtained the certified copy of impugned order and consequently they filed the application for setting aside the decree.

14. The reasons given by the defendant for setting aside the decree and the delay caused has been accepted by the Trial Court and the Trial Court has set aside the said eviction decree which was passed earlier without hearing the defendant; subject to the payment of cost.

15. I have considered all the documents on the record. It has been held in various judgments that parties should not be punished for the mistakes made by their Advocate. The decree was passed on 16 October 2014, and the Application for setting aside the decree was filed in the month of May, 2015. In fact, even the suit summons was not served on the Defendant's address but the said summons was served at another address of

the defendant at Andheri. Infact on the issue of arrears of rent the trial court has held that defendant had not defaulted in the payment of rent. In my view there is no perversity in the impugned judgment and Order passed by the trial court, which had set aside the decree and has restored the suit to file to be decided in accordance with law.

16. There is no merit in the Civil Revision Application and the same is dismissed. No costs.

[RAJESH S. PATIL, J.]