

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10031 OF 2024

Dhandeep Gautam Salot and Anr.

.. Petitioners

Versus

Merloy Jerom Kinny and Ors.

.. Respondents

.....

- Ms. Janvhi Joshi i./by Manmohan Rao, Advocate for Petitioners.
- Mr. Prasanna Kumar i./by MZM Legal LLP, Advocate for Respondent No.3.

.....

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 26, 2024

P.C.:

1. Heard Ms. Joshi , learned Advocate for Petitioners and Mr. Kumar, learned Advocate for Respondent No.3.

2. The order dated 14.02.2023 is impugned and taken exception to in the present Writ Petition by Plaintiffs before the Trial Court. By virtue of the said order, Notice of Motion filed by Plaintiffs bearing No.1799 of 2018 is rejected. Notice of Motion was filed by Plaintiffs for the following reliefs :-

- condonation of delay of 2960 days for filing of suit plaint after it was returned back by this Court;
- to set aside order dated 15.12.2009 of return of the plaint;
and
- to seek extension of time to pay deficit Court fees on the suit plaint being taken on record.

3. The aforesaid reliefs in Notice of Motion are considered by a series of facts which are required to be delineated since by virtue of the impugned order if the Plaintiffs stand ousted, and in that case there is no other remedy available to them for restoration and revival of their suit proceedings which has been returned. There is substantial delay which is also required to be considered in the facts of this case.

4. Briefly stated it is seen that suit is filed by Plaintiffs on 26.11.2009 being nomenclatured as Suit No.1093 of 2010 seeking cancellation of Agreement of sale dated 03.11.2007 executed between the parties. It is seen that suit is filed within limitation, but on the ground of pecuniary jurisdiction, suit was returned by this Court to Plaintiffs to be filed in the appropriate Court by order dated 15.12.2009.

5. Ms. Joshi would at the outset submit that pursuant to passing of the said order, Plaintiffs were completely unaware about the status of the suit proceedings since the Advocate engaged by Plaintiffs did not revert back to them. She would fairly submit that this position prevailed until 2018 when Plaintiffs approached their Advocate and she orally informed them that their suit was transferred to the City Civil Court. Plaintiffs therefore appointed a new Advocate to undertake search of the suit proceedings in this Court first and thereafter in the Bombay City Civil Court. She would submit that it is

at this time in 2018 the Plaintiffs realised about passing of the order dated 15.12.2009 about which they were completely unaware. She would submit that Plaintiffs filed Notice of Motion No.1799 of 2018 seeking condonation of delay of 2960 days as also for seeking to set aside the order of return of plaint dated 15.09.2012 since in the meanwhile the pecuniary jurisdiction of this Court was transferred to the Bombay City Civil Court and since the suit was directed to be returned to the Plaintiffs to be filed in the Bombay City Civil Court itself.

6. Ms. Joshi has drawn my attention to the Affidavit-in-support of the Notice of Motion which is appended at page No.316 of the Writ Petition and would contend that the suit filed by Plaintiffs seeks cancellation of an Agreement for sale between the parties which was a registered agreement on the ground that that Plaintiffs were forced and coerced to execute the said sale deed at gun point. She would submit that Plaintiff No.3 being a senior citizen is involved in execution of the Agreement and has so averred in the Affidavit in support of the Notice of Motion. She has drawn my attention to the same and I have perused the same.

7. Considering the facts in this case all that Ms. Joshi would submit is that if the impugned order is sustained, Plaintiffs' suit and claim would be completely ousted. She would draw my attention to

the fact that Plaintiffs would be rendered completely remediless if the impugned order is sustained.

8. I have perused the impugned order and I agree with the submissions made by Ms. Joshi. It proceeds on the premise that the Trial Court would not have jurisdiction to entertain the Notice of Motion and therefore the said Notice of Motion seeking condonation of delay is rejected. It is seen that by virtue of notification dated 28.08.2012 passed by the State Government, on account of pecuniary jurisdiction the suit is transferred to the Bombay City Civil Court. Hence the City Civil Court will have jurisdiction to decide the Notice of Motion in respect of the suit proceedings as also any interlocutory application filed by parties therein. In that view of the matter, learned Trial Court is incorrect in arriving at the finding that Plaintiffs have failed to present the suit plaint before the proper Court having jurisdiction as arrived at in paragraph No.14 of the impugned order. Next is the question of delay of 2960 days for setting aside the order and considering the ground for the same. Ms. Joshi would leave it to the Court to condone the delay on appropriate terms as deemed fit since according to her, the factual ground is stated by the Petitioners.

9. **PER CONTRA**, Mr. Kumar, learned Advocate represents the Respondent No.3 - Bank. He would submit that according to his instructions the suit property is mortgaged with the Bank and there are

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short '**SARFAESI**') proceedings going on in DRT *qua* the suit property. He would submit that today he does not have appropriate instructions but he will endeavour to file Affidavit-in-Reply. He makes a request to the Court for time to file Affidavit-in-Reply. The request made by Mr. Kumar stands allowed. Affidavit-in-Reply by any Respondent herein be filed within a period of one week from today positively.

10. Parties shall take note that this Writ Petition shall be disposed on the next adjourned date at the stage of admission itself when the issue of delay shall be considered.

11. Stand over to **02nd September, 2024**. To be placed under the caption '**First on Board**'.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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