

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9894 OF 2024**

Jayprakash Keshav Jadhav

.. Petitioner

Versus

Addl. Kokan Commissioner and Ors.

.. Respondents

...

Mr. Rupesh Bhalshankar Advocate for Petitioner.

Mr. Suresh Upadhyay a/w Mr. Shubham Upadhyay, Advocate for Respondent No.3.

Ms. Priyanka B. Chavan, AGP for Respondent-State.

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CORAM : SANDEEP V. MARNE J.

DATE : 19 JULY 2024.

P.C. :-

1) By this Petition, the Petitioner has challenged order dated 27 March 2024 passed by the Additional Divisional Commissioner, Konkan Division rejecting application filed by him for condonation of delay of 11 months in filing the Revision Application.

2) I have heard the learned counsel appearing for the Petitioner as well as the learned counsel appearing for Respondent No.3 – licensor.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that Respondent No. 3 – licensor impleaded the Petitioner as Respondent No.2 in his Eviction Application by describing him as “Mr. Jaiprakash Yadav”. According to the Petitioner, his correct name is “Jayprakash

Keshav Jadhav”. The Petitioner complains that he did not receive any notice in respect of the Eviction Application. The Petitioner submits that he acquired knowledge about the order dated 1 December 2022 passed by the Competent Authority only when the order was sought to be executed. It appears that when the order was sought to be executed, Petitioner initially filed application for stay of execution proceedings before the Competent Authority on 28 October 2023. In the meantime, he filed Revision Application before the Additional Divisional Commissioner, Konkan Division. Since there was delay in filing the Revision Application, application was filed for condonation of delay. The Revisional Authority has proceeded to reject the application for condonation of delay.

3) Perusal of the order passed by the Additional Divisional Commissioner would indicate that following reasons are recorded for rejecting the Application for condonation of delay.

6. According to me the reasons mentioned by the Applicant in the delay condonation application is not bonafied reason to condone the delay application of the Applicant. As per judgment passed by the competent authority it is clearly stated that notice served under Section 43 (2)(3) of the MRC Act and respondent filed service affidavit, after receiving the same applicant failed to appear before the competent authority and even failed to file leave to defend application. Therefore the judgment passed by the competent authority is justifiable.

4) Thus, when the Petitioner approached the Revisional Authority with a specific case that he was never served with summons in respect of Eviction Application and that he acquired knowledge of the Eviction order dated 1 December 2022 only after the eviction order was sought to be executed, it was necessary for the Revisional Authority to inquire as to whether, the summons in respect of Eviction proceedings was indeed served on the Petitioner or not. Instead of conducting such inquiry, the Revisional Authority blindly relied upon service affidavit filed by the

licensor before the Competent Authority and recorded a finding that despite service of summons, Petitioner failed to appear before the Competent Authority. The Revisional Authority has gone a step ahead and even determined merits of the order of the Competent Authority by holding that “therefore, the judgment passed by the Competent Authority is justifiable”.

5) It appears that there is nothing on record to indicate that Petitioner was served with summons in the Eviction proceedings. The learned counsel appearing for Respondent No.3 would submit that Petitioner has no *locus standi* in the Eviction proceedings instituted against the licensor Mr. Sumer Singh. In my view, the Respondent No.3, on his own accord, chose to implead Petitioner as Respondent No.2 in the Eviction Application. Once the Petitioner was impleaded as a Respondent in the Eviction Application, it became incumbent for Respondent No.3 to serve the Petitioner with summons. It appears that the name of the Petitioner was also erroneously described in the title of the Eviction Application, which also could be one of the factors why the summons was not served on him.

6) In my view, the perfect case was made out by the Petitioner for condonation of delay in filing the Revision Application.

7) Consequently, Writ Petition succeeds. Order dated 27 March 2024 passed by Additional Divisional Commissioner, Konkan Division is set aside. Delay in filing the Revision Application is condoned. The Additional Divisional Commissioner shall proceed to decide the Revision Application on its own merits.

8) With the above directions, the Writ Petition is allowed and disposed off.

[SANDEEP V. MARNE J.]