

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.407 OF 2024

Nilesh Pyarelal Gupta

....*Applicant*

V/s.

Nuruddin Esmailji Dhariwalla and

Anr.

....*Respondents*

Mr. Anand Pande *for the Applicant.***Ms Eventa Andrew Gonsalves** *with Mr. R.L.Gonsalves for the Respondent.**Mr. Nilesh Pyarelal Gupta, Applicant is present.*

CORAM : SANDEEP V. MARNE, J.

Dated : 8 August 2024.

P.C. :

1) The challenge in the present Revision Application is to the order dated 3 July 2024 passed by the Appellate Bench of the Court of Small Causes, Mumbai, rejecting the M.A.R.J.I. Application No.162 of 2017 filed by the Applicant seeking restoration of Appeal, which has been dismissed in default by order dated 20 August 2015.

2) I have heard Mr. Pande, the learned counsel for the Applicant and Ms Gonsalves, the learned counsel for the Respondent.

3) After having heard the learned counsel appearing for the parties, it appears that decree in the Suit is passed on 30 April 2010 directing the original Defendant to handover possession of the suit property to the

Plaintiff on the ground of subletting. The original Defendant filed Appeal No.289 of 2010 before the Appellate Bench challenging the eviction decree dated 30 April 2010.

4) According to Mr. Pande interim compensation of Rs.2,000/- was fixed by the Appellate Bench to be deposited during pendency of the appeal. It appears that the original Defendant /Appellant-Pyarelal Gupta passed away on 5 February 2013. It is an admitted position that after his death, the interim compensation as directed by the Appellate Bench has not been deposited by his heirs. An application at Exhibit-13 came to be filed in the Appeal on 10 April 2013, which came to be allowed and legal heirs of the deceased-Appellant were permitted to be brought on record. Despite grant of three extensions by the Appellate Bench from time to time to carry out the amendment, negligence was shown in not carrying out amendment. On the fourth occasion extension of time was sought to carry out amendment on 1 February 2014, which application came to be rejected by the Appellate Bench by order dated 1 October 2014. It appears that last extension was sought on 6 January 2014 after passage of 10 long months from the date of earlier order dated 10 April 2013. The Appellate Bench thereafter proceeded to dismiss the appeal by order dated 20 August 2015.

5) Applicant filed M.A.R.J.I. Application No.162 of 2017 on 15 October 2015 and kept the same pending without removal of objections and the same appears to have been registered two years later on 23 June 2017. Again the M.A.R.J.I. Application, which was lodged on 15 October 2015 was kept pending for more than 9 years and has ultimately been rejected by the Appellate Bench by order dated 3 July 2024.

6) Considering the above chronology of the events, an inescapable conclusion that arises from the conduct displayed by the Applicant is that there has been gross negligence in prosecuting the Appeal. Despite decree of eviction is passed in the year 2010, the same is not yet executed on account of presence of various third parties being found in the suit premises. Upon query being raised by this Court as to whether the Applicant is willing to deposit interim compensation @ Rs.10,000/- from the date of decree, the Applicant, who is personally present before the Court, expresses inability to do so. It is thus clear that the Applicant is deliberately delaying the proceedings with a view to ensure that the suit premises are occupied free of charge despite passing of decree for eviction on 30 April 2010.

7) Considering the above conduct of the Applicant, this Court is not inclined to interfere in the order dated 3 July 2024 passed by the Appellate Bench.

8) Civil Revision Application is accordingly rejected.

[SANDEEP V. MARNE, J.]

9) After the order is pronounced, Mr. Pande, after taking instructions from the Applicant, who is personally present in the Court, makes a statement that the Applicant shall vacate the suit premises within a period of two months from today. He further makes a statement that as of today, Applicant's sister- Mina Gupta and mother-Santosh Gupta are occupying the suit premises and that all of them shall vacate the suit premises and handover the vacant and peaceful possession thereof to the original plaintiff within a period of two months from today. He further submits

that the Applicant shall file an undertaking to that effect with usual terms within a period of one week. In the event, the Applicant files an undertaking in usual terms within one week, time to vacate the suit premises is granted till 8 October 2024.

[SANDEEP V. MARNE, J.]