



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

8 CIVIL APPLICATION NO. 6886 OF 2012
IN WP/8346/2005

Khan Mohd Khan Gulab Khan Thr Lrs Khan Nazir Ahmed Gulam And
Ors

VERSUS

Eqbal Papamiya Kazi And Ors

...

Mr. Ravindra J. Nirmal , Advocate for Applicants (appointed).

Mr. V. S. Bendre, Advocate for Respondent Nos. 1, 2 and 3B.

CORAM : KISHORE C. SANT, J.

DATE : 15th JANUARY 2025

PC :-

1. Heard the learned Advocates for the parties.
2. This application is for restoration of Writ Petition No.8346 of 2005 which was dismissed for want of prosecution by order dated 22nd October 2008 and for condonation of delay of 1177 days caused in filing this application.
3. In the application it is stated that, the petition was admitted in 2005 which was subsequently dismissed for non removal of office objection within stipulated period and, therefore, application bearing

This order is corrected pursuant to speaking to minutes of order dated 24.01.2025.

Civil Application No.11617 of 2008 was filed for restoration. Conditional order was passed. It is stated that, there was no communication between the Advocate and the client because of change of telephone number. There was also some personal difficulty and for that purpose the objections could not be removed as per conditional order. It is, therefore, prayed that, the petition be restored to its original position.

4. Mr.Bendre, the learned Advocate appearing for Respondents has vehemently opposed the application. He submits that the present writ petition arises out of proceedings under the Bombay Rent Act, 1947. Suit of the petitioner-landlord was dismissed on 3rd April 2000. Even the appeal filed thereagainst bearing No.178 of 2000 came to be dismissed by order dated 19th April 2004. The petition was filed challenging the Appellate Court's judgment. A conditional order was passed directing to remove office objections. In spite of the said order, no objections were removed within stipulated time and petition was dismissed on 15th October 2007. Civil Application No.11677 of 2007 was filed for restoration though the same was allowed with condition those were not

fulfilled and the rejection order stood as it is. The petition again came to be dismissed and now this application is filed. He invites the attention to the order dated 26th August 2013 passed by this Court directing the petitioners to take steps within two weeks from the date of order. He submits that inspite of that, no steps were taken. Thereafter, the application was dismissed.

5. It is only from April 2008, the application was again moved. This Court observed that, the petitioner has not impleaded as Respondent No.3(c) and has not taken steps in respect of Respondent No.3(a). Matter was directed to be listed on 15th April 2024. Thereafter, on 14th June 2024, none was present for the applicant and the matter was adjourned to 20th July 2024. On that day, matter was not called out, and it was adjourned on 20th July 2024. On that day again none was present and the same was adjourned to 16th August 2024. On the request of learned Advocate for the applicants, the same was adjourned to 6th September 2024. On 6th September 2024, none was present for the applicant, the Court adjourned the matter on 27th September 2024 for

dismissal. Thereafter, the learned Advocate for the Respondents raised an objection as to how the application is filed through legal aid, when the applicant No.1(a) and 1(b) happens to be practicing Advocates. They are not entitled to receive legal aid. Even explanation was called from applicant No.1(a) and 1(b) as to how the legal aid can be granted to them and matter was adjourned to 18th November 2024. On that day, again none was present and the matter was thus kept for dismissal today.

6. Mr. Bendre pointed out all these orders. It is clear that the applicants are not seriously prosecuting the writ petition and even this application. He relied upon the judgment in the case of *Dibijan and Ors. Vs. Murdidhar and Ors.*¹, and order dated 22nd November 2021 passed by this Court in Civil Application No. 3668 of 2021 in Second Appeal No. 454 of 2004. In both these orders, this Court has clearly held that parties need to show due diligence. The proceedings were dismissed for not taking steps. In the present case also this Court finds that the approach of the petitioner was very casual.

1 (1995) AIR (SCW) 121

7. Looking to the dates and events recorded above would show that the petitioners approach is very callous very carelessness and there is no justifiable ground made out to allow the present application. Application is dismissed.

8. The learned Advocate for Petitioners is appointed through legal aid. Fees of appointed Advocate is quantified at Rs.10,000/- to be paid by High Court Legal Aid Services, Sub-Committee Aurangabad.

[KISHORE C. SANT, J.]