

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.19217 OF 2024

Manisha Mohan Kademani & Ors.	...Petitioners
<i>Versus</i>	
Divakar Bardinayan Singh & Anr.	...Respondents

Mr. Harshal Mirashi, for the Petitioners.
Mr. Ghanshyam Mishra a/w. Ms. Ekta Bhalerao, for the Respondents.

CORAM: MADHAV J. JAMDAR, J.
DATED : 4th MARCH 2025

P. C.:

1. Heard Mr. Harshal Mirashi, learned Counsel appearing for the Petitioners and Mr. Mishra, learned Counsel appearing for the Respondents.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the order dated 4th December 2024 passed by the learned Appellate Bench of Small Causes Court at Mumbai in Marji Application No.101 of 2024. The said Marji Application has been taken out in Appeal challenging Judgment and Decree dated 6th April 1995

passed in R.A.E. & R. Suit No.987 of 1992. By the said Marji Application, the present Petitioners are seeking to condone the delay of about 10,756 days caused in filing said Appeal. The learned Appellate Court has held that no sufficient reasons are given and therefore, dismissed the said Application.

3. It is the submission of Mr. Mirashi, learned Counsel appearing for the Petitioners that in fact Order 41, Rule 33 of the Code of Civil Procedure, 1908 (“CPC”) is applicable and therefore, the Appellate Court should not have dismissed the Marji Application.

4. On the other hand, Mr. Mishra, learned Counsel appearing for the Respondents submitted that the eviction suit has been filed in the year 1992. The said suit has been decreed on 6th April 1995. The present Petitioners obstructed the execution of the decree and filed the Obstructionist Notice. The said Obstructionist Notice was allowed and therefore, the Petitioner preferred Execution Appeal and in the said Execution Appeal, the stay was granted subject to payment of compensation. As the Petitioners failed to comply with the said order, the stay granted is vacated and subsequently the

said Execution Appeal has also been dismissed. The Petitioner filed Writ Petition (L) No.14531 of 2022 challenging the order dated 30th September 2019, by which compensation of Rs.8,000/- per month has been determined. Thereafter, the Petitioners filed Civil Revision Application No.231 of 2023 challenging the order dated 17th June 2022 passed by the learned Appellate Court in Execution Appeal No.108 of 2018. He submitted that thereafter, when the execution proceedings are pending, the Applicants preferred the Appeal challenging the Judgment and Decree dated 6th April 1995 and also filed Marji Application No.101 of 2024 to condone the delay of 10,756 days. The said Marji Application was rejected by the impugned order. Thus, it is submitted by Mr. Mishra, learned Counsel that after obstructing the decree unsuccessfully and when the challenge to the same is pending by way of Civil Revision Application No.231 of 2023, now the decree is sought to be challenged after delay of 10,756 days. He therefore, submitted that this is not a case where delay be condoned.

5. Before consideration of rival contentions, it is necessary to set out list of dates and events as filed by the Respondents. The same are reproduced herein below for ready reference:

<i>DATE</i>	<i>EVENTS</i>	<i>PAGE</i>
<i>1992</i>	<i>Suit for Eviction filed</i>	
<i>6.4.1995</i>	<i>Suit Decreed</i>	
<i>20.11.1995</i>	<i>Obstructionists/Petitioners obstructed the execution of decree.</i>	
<i>24.11.1995</i>	<i>Obstructionist Notice No.14/95 taken out.</i>	
<i>27.3.2018</i>	<i>The Notice was allowed.</i>	<i>1-13</i>
	<i>The Petitioners herein preferred Exe. Appeal No.108/18 and took out Exh. 6 for interim stay and the Respondent/Plaintiff also took out Exh. 13.</i>	
<i>30.9.2019</i>	<i>Exh.6 and 13 were allowed subjected to payment of compensation @ Rs.8000/- per month from the date of decree till the date of order and to continue to pay the compensation.</i>	<i>14-19</i>
<i>14.3.2020</i>	<i>The Petitioners failed to comply with order dated 30.9.2019. Therefore, vide order on Exh.16, the Appellant Bench vacated the stay on execution of decree.</i>	<i>20-23</i>
<i>17.6.2022</i>	<i>The Exe. Appeal No.108/2018 was dismissed and order dated 27.3.2018 was confirmed. The Petitioner had also applied for leading additional evidence and the said application was also rejected.</i>	
<i>17.6.2022</i>	<i>The Petitioner filed a Writ Petition challenging the order dated 30.9.2019 but they never moved the said writ petition.</i>	
<i>Aug.,2022</i>	<i>The Civil Revision Application was filed but the Applicants never moved.</i>	
<i>31.1.2023</i>	<i>The Trial Court issued warrant of possession</i>	<i>39-40</i>
<i>1.3.2023</i>	<i>The Applicants fought with Bailiff therefore Trial Court passed order for police protection.</i>	<i>41-43</i>
<i>18.7.2024</i>	<i>The warrant of possession was re-issued.</i>	<i>44-46</i>
<i>24.10.224</i>	<i>The warrant could not be executed due to Applicant's violence behavior therefore the warrant of possession was re-issued with</i>	<i>47-50</i>

	<i>police protection.</i>	
28.11.2024	<i>The police protection could not be made available by local police therefore the warrant was re-issued.</i>	51-54
4.12.2024	<i>The Applicants preferred an appeal to challenge order dated 6.4.1995 and sought condonation of delay of 10756 days vide MARJI No.101/2024 and it was rejected.</i>	55-60
Dec., 2024	<i>The Applicants have filed WP No.19217/24 challenging order dated 4.12.2024.</i>	
21.1.2025	<i>The Warrant of possession was executed with the help of police and the Applicants were removed forcibly. The bailiff submitted his report on the next day.</i>	61-67
21.1.2025	<i>After execution of warrant of possession, the Respondent was taken to police station with Bailiff for completion of further process, and the Applicants forcibly broke open the lock and entered the suit premises. The Respondent lodged his complaint vide F.I.R. No.63/2025 u/s. 329(4) and 331(3) of BNS 2023.</i>	68-73
28.1.2025	<i>By suppressing the said fact of forcibly and illegal entry despite execution of warrant of possession, the Applicants made false statement and obtained an order of 'status quo'. The Applicants are still occupying the suit premises.</i>	

6. The above dates clearly show that R.A.E. & R. Suit No.987 of 1992 has been filed by the Respondent No.1 against the original Defendants. The said suit has been decreed by the Judgment and Decree dated 6th April 1995. The present Petitioners obstructed the

execution of the said decree and therefore, Obstructionist Notice No.14 of 1995 was taken out by the Respondents. The said Obstructionist Notice filed in said R.A.E. & R. Suit No.987 of 1992 was allowed by the order dated 27th March 2018 by passing the following operative order:

“ORDER

- 1. Obst. Notice No.14 of 1995 is made absolute.*
- 2. The obstructionists or any person on their behalf be removed from the suit premises at the time of execution of warrant of possession while executing the decree in R.A.E. & R. Suit No.987 of 1992.*
- 3. No order as to costs.”*

7. The present Petitioners filed Execution Appeal No.108 of 2018 and sought stay to the above order dated 27th March 2018. The stay has been granted by the learned Appellate Court by passing the following operative order dated 30th September 2019 below Exhibits 6 and 13 in said Execution Appeal No.108 of 2018:

“:ORDER:

- 1. The Applications (**Exhibit-6 & 13**) are allowed.*
- 2. The execution of decree dated 27.03.2018 passed in Obst. Notice No.14 of 1995 in R.A.E. & R. Suit No.987 of 1992 is hereby stayed till final disposal of the appeal on following conditions:*

(a) The appellants shall deposit monthly compensation in respect of the suit premises at the rate of Rs.8,000/- (Rupees Eight thousand only) per month from the date of decree till September-2019 within the period of one month.

(b) The appellants continue to deposit per month compensation at the rate of Rs.8,000/- (Rupees Eight thousand only) from October, 2019 till the final disposal of the appeal on or before 10th day of every succeeding month.

(c) The Additional Registrar of this Court is hereby directed to invest the amount as and when deposited by the appellants in Fixed Deposit Account for initial period of one year in the Nationalized Bank on next working date and thereafter renew it from time to time.

3. Inform the learned Trial Court accordingly.”

8. As the said amount of monthly compensation of Rs.8,000/- per month has not been paid, Exhibit-16 Application has been filed seeking vacation of the stay and by the order dated 14th March 2020, learned Appellate Court allowed the said Application bearing Exhibit-16 filed in Execution Appeal No.108 of 2018. The operative part of the said order dated 14th March 2020 reads as under:

“ORDER

1. The application Exhibit-16 is allowed.

2. The stay granted to the execution of decree dated 27.03.2018 passed in Obst. Notice No.14 of 1995 in RAE/R Suit No.987 of 1992 dated 30.09.2019 is hereby vacated.

3. Costs in cause.

4. Inform the trial court accordingly.”

9. Thereafter, the said Execution Appeal No.108 of 2018 has also been dismissed by the Judgment and Decree dated 17th June 2022. The operative part of the same reads as under:

“::O R D E R::

1. The Execution Appeal is dismissed.

2. The impugned order dated 27th March, 2018 passed by the Learned Trial Court Room No.34 in Obstructionist Notice No.14 of 1995 in R.A.E. & R. Suit No.987 of 1992, by the Learned Trial Court Room No.34 is hereby confirmed.

3. Vide Order 21 Rule 100 of the Code of Civil Procedure, 1908, it is directed that the Decree Holder be put into possession of the suit premises.

4. Parties to bear their own costs.

5. Inform the Learned Trial Court accordingly.”

10. The Petitioners have filed Civil Revision Application No.231 of 2023 challenging the legality and validity of the said Judgment and Decree dated 17th June 2022. In the meanwhile, when the said Civil Revision Application is pending regarding obstructionist

proceedings, the Petitioners filed Appeal challenging the Judgment and Decree dated 6th April 1995 passed in R.A.E. & R. Suit No.987 of 1992. The said Application has been dismissed by the impugned order.

11. Mr. Mirashi, learned Counsel appearing for the Petitioners has mainly relied on Order 41, Rule 33 of the CPC. He also relied on the decision of the Supreme Court in the case of ***Giani Ram & Ors. vs. Ramji Lal & Ors.***¹.

12. Order 41, Rule 33 of the CPC reads as under:

“33. Power of Court of Appeal.— The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection, [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:

1 AIR 1969 1144

[Provided that the Appellate Court shall not make any order under section 35-A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to made such order.]”

The said Order 41, Rule 33 is concerning power of the Appellate Court when the Appellate Court will be dealing with the main Appeal filed by the present Petitioners on merits. However, in this Writ Petition, order passed in delay condonation application filed in said Appeal is under consideration. There is inordinate delay of 10,756 days in filing the Appeal. This is a case where the Petitioners have obstructed the execution of the decree dated 6th April 1995 immediately in the year 1995 and therefore, it is clear that since 1995, the Petitioners have knowledge of the said decree.

13. In fact, as the Petitioners have obstructed the decree, it is their contention that they have got independent right, title and interest with respect to the suit premises and the Petitioners are agitating the said contention by filing the said Civil Revision Application No.231 of 2023. The learned Appellate Court while dismissing the Application have stated that no reasons whatsoever have been given for condonation of delay. Apart from that, it is

observed that the intention of the Petitioners is not *bona fide*. It is observed that delay is of about 29 years.

14. Thus, in the facts and circumstances, no case is made out to interfere in the impugned order under the jurisdiction of this Court under Article 227 of the Constitution of India.

15. Accordingly, the Writ Petition is dismissed, however, with no order as to costs.

16. As the merits of Civil Revision Application No.231 of 2023 are totally different, the same will be heard separately. The same is to be placed on board on 18th March 2025.

[MADHAV J. JAMDAR, J.]

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