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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 115 OF 2018
WITH
INTERIM APPLICATION NO. 10862 OF 2025
IN
CIVIL REVISION APPLICATION NO. 204 OF 2013

Atiullah Abdulla AnsariApplicant
V/s
The Board Of Trustees Of The Port Of MumbaiRespondent

Mr. Pradeep Thorat i/b. Ms. Eventa A. Gonsalves a/w. Mr. Reyden L. Gonsalves, for Applicant.
Ms. Kajal Gupta a/w. Ms. Shweta Singh i/b. M. V. Kini & Co. for Respondent.

CORAM : M.M. SATHAYE, J.
DATE : 15th OCTOBER, 2025

P.C. :

1. Heard learned counsel for the parties. Perused the record.
2. CA/115/2018 is filed seeking restoration of above Civil Revision Application, which was dismissed for default on 25.06.2014 because nobody appeared for the Applicant. There is delay in filing this application of about 2 years and 101 days. This application was filed in April 2016 and record indicates that it was not pressed and not a single order is passed in this application by the Court till today. Respondent is presently known as Mumbai Port Authority.
3. IA/10862/2025 is filed in July 2025, apparently when the possession warrant was issued against the Applicant and the same

was pressed by Respondent Port Trust.

4. The sum and substance of both the applications is as follows.

4.1. The Applicant contends that the above civil revision application was filed challenging the order dated 19.06.2012 by which the appeal filed by the Applicant was dismissed. The Applicant had filed Appeal No.20 of 2011 challenging order dated 18.08.2011 by which his obstruction was considered under Obstruction Notice No.19 of 2007 and after hearing both sides, the order was passed to remove his obstruction.

4.2. According to the Applicant, the revision application had appeared on board on 12.11.2013. Thereafter, it was listed on 16.12.2013 when the Applicant's advocate appeared. Thereafter, civil revision application was kept for dismissal on 23.12.2013. Ultimately on 25.06.2014, it was listed and since nobody appeared it was dismissed for default. The only reason given by the Applicant for delay in filing restoration is that his advocate did not inform any of the dates to the Applicant.

5. It appears that though the revision application was kept for dismissal on 23.12.2013, it was not so dismissed. The Court was considerate. The revision application thereafter appeared on 20.01.2014, 24.02.2014 and 28.02.2014. Ultimately on 25.06.2014, it was dismissed for default as no one appeared.

6. As is already noted above, the present restoration application was filed in April 2016 and since there was no stay to the execution

in which the Applicant had obstructed, the execution was pressed by the Respondent.

7. From the averments in the application, it is seen that the Applicant was appearing before the executing Court and warrant of possession issued on 11.03.2025 was challenged by filing revision before the Appellate Bench of the Small Causes Court. It is only after this revision before Small Causes Court was rejected, the Applicant chose to file the above IA/18062/2025, seeking stay to the decree which he had obstructed.

8. The Applicant, apart from pleading that he is carrying out metal cutting and polishing business from the suit premises, has not indicated anything about his situation. Even in the affidavit filed by the Applicant in the obstructionist proceedings he has pleaded nothing but a case of denial. From the perusal of the record, the Applicant seems to have preferred not to disclose the right under which he has obtained possession of the suit premises. The only stand is that he is in possession for long time.

9. The Applicant was diligent enough to take steps challenging warrant of possession, when the proceedings reached his neck and he was about to lose possession. Nothing prevented the Applicant from showing same diligence when the above Civil Revision Application was listed number of times before this Court and considerate approach was adopted and matter was adjourned number of times.

10. From the overall facts and the circumstances, the Applicant does not seem to be an innocent litigant who is completely

dependent upon his lawyer.

11. It is rightly pointed out by learned counsel for the Respondent that though the application for restoration was filed, it was simply kept pending and was not moved and it is only when the possession warrant was issued that fresh application was filed seeking stay.

12. Learned counsel for the Applicant relied upon the judgments of **Rafiq & Anr. Vs. Munshilal & Anr. [(1981) 2 SCC 788]** and **Ashok Ravji Vadodriya Vs. Municipal Corporation of Greater Bombay [2003 SSC OnLine Bom 367]** to contend that the party must not be allowed to suffer for the fault of his advocate.

13. In the case of **Rafiq Vs. Munshilal (supra)**, the Hon'ble Supreme Court has held that under our adversary legal system, where parties generally appear through their advocates, the obligation of parties is to select his advocate, brief him and pay the fees demanded then trust him to do the rest of the things. It is held that parties should not suffer for lapses on the part of their counsel.

14. In the case of **Ashok Ravji Vs. MCGM (supra)**, learned single judge of this Court held that it would not be appropriate to hold that it is the duty of the litigant to attend the Court and convey the adjourned date and if such is the case, party cannot be made to suffer for fault of advocate.

15. In the present case, it is material to note that on earlier occasions, the Applicant's advocate appeared but then on last date, he did not. There is nothing on record to even remotely suggest that the

Applicant had given necessary instructions to his lawyer and had paid his fees, so as to claim that the advocate ought to have done his job and Applicant had no responsibility. Therefore, in peculiar facts of this case, the aforesaid judgments will not help the Applicant.

16. In view of the aforesaid facts and circumstances, in my considered view, the reason of putting entire blame upon the advocate appears only convenient and not genuine. There is no sufficient cause for condonation of delay in filing the restoration application.

17. Therefore both the applications are dismissed.

18. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)