

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO.9 OF 2024
IN
SECOND APPEAL NO. 1873 OF 2022 (Filing No.)

VISHNU NAROTTAM RAIKAR AND ANR. Applicants

Versus

OLIVE G DMELLORespondent

Mr C. Padgaonkar, Advocate for the Applicants.

Mr A. D. Bhobe and Ms A. Fernandes, Advocates for the Respondent.

CORAM: M. S. SONAK, J.

DATED: 25th APRIL 2024

P.C.:

1. Heard Mr C. Padgaonkar, learned counsel for the Applicants and Mr A. D. Bhobe, learned counsel for the Respondent.
2. This is an application seeking condonation of a delay of 493 days in instituting this Second Appeal. The second appeal is against an order by which the first appellate court dismissed an application for condoning a delay of 929 days in instituting the first appeal.
3. The Applicants are the original defendants, and the Respondent is the original plaintiff in Regular Civil Suit No.36/2006/B instituted by the plaintiff/Respondent herein for eviction of the Applicants' herein.

4. The trial Court decreed regular Civil Suit No.36/2006/B on 02.09.2013. This decree was never challenged during the period of limitation. Instead, after almost two years, on 06.10.2015, a writ petition was filed to challenge the decree. On realising that such a writ petition was not maintainable, this writ petition was withdrawn on 28.03.2016. On 21.04.2016, the first appeal was filed against the decree dated 02.09.2013, accompanied by an application seeking condonation for a delay of 929 days. By order dated 20.01.2021, the First Appellate Court declined to condone this delay by giving cogent reasons. This Second Appeal has been instituted after the delay of 493 days.

5. The application seeking condonation of delay acknowledges that the appeal was prepared and that the affidavits are in support of the Misc. Civil Applications were sworn in the registry of this Court on 05.04.2021. After this, the case is that the Applicants were under the bonafide impression that the appeal was already lodged. It was only after they received notice of execution that the inquiries were made, and it was found that this appeal had not been lodged. Hence, the delay. The application also states that the appeal could not be lodged due to the COVID-19 pandemic issues that intervened.

6. Mr Padgaonkar submits that the trial Court's decree was contrary to law, and it was only because the Applicants allegedly disobeyed an injunction order that their defence was struck off and a decree was made.

He submitted that the Applicants are senior citizens, and one of them is 82 years old. He submits that some allowance should be made to the Applicants' age and that the trial Court's decree was extremely vulnerable. He submits that the Applicants went by legal advice and should not be disproportionately penalised. For all these reasons, Mr Padgaonkar submits that a case has been made to condone the 493-day delay in instituting this Second Appeal.

7. On the other hand, Mr Bhobe points out that the Respondent, in this case, is 95 years old. He points out that she has been pursuing her matter, seeking the Applicants' eviction since 2006. He points out that even the execution proceedings have been pending since 2014. He submitted that the Applicants attended the execution proceedings and sought adjournments on the grounds that the proceedings were pending before the Appeal/Writ Court every time. Mr Bhobe pointed out that even after the affidavit supporting this Second Appeal was sworn, the execution was going on, and the Applicants sought adjournment on the grounds that the appeal was pending.

8. Mr Bhobe submits that the reasons set out in the Misc. Civil Applications are far from bonafide. He submits that even the Respondent is 95 years old and has been following the legal process since 2006. He submits that the Applicants defied the injunction order, and on account of this delay, the Applicants have continued to reside in the suit premises

without the authority of law and by simply postponing the execution proceedings on the ground of pendency of matters. For all these reasons, Mr Bhobe submits that this application should be dismissed.

9. The rival contentions now fall for determination.

10. There is a delay of 493 days in instituting the Second Appeal. This delay is quite inordinate, and therefore, a proper explanation was necessary.

11. The record shows that even the first appeal, from which this Second Appeal arises, was sought to be instituted after a decree of 929 days. This delay was not condoned. Hence, this Second Appeal.

12. The reasons which prompted the First Appellate Court not to condone the delay of 929 days in instituting the first appeal may not be strictly relevant. However, they assume some relevance in the context of evaluating arguments of bonafide now raised by Mr Bhobe on behalf of the Respondent.

13. The First Appellate Court, by a detailed judgment and by citing cogent reasons, has dismissed the application seeking condonation of delay of 929 days in instituting the first appeal. That order gives rise to no substantial question of law. Even before the First Appellate Court, the Applicants have taken undue advantage of their delay by postponing the execution by citing pendency.

14. Be that as it may, the issue of condonation of 493 days' delay in instituting this Second Appeal will have to be independently considered. The Applicants admit that the appeal was prepared by 05.04.2021 and even affidavits in support of Misc. Civil Application were sworn. However, the appeal was filed only after 493 days.

15. The main reason given is that the Applicants were under the bonafide impression that the appeal was already lodged. The pandemic issue has been casually included to add spice. There is an inherent contradiction. At one stage, the claim is the alleged bonafide impression that the appeal was lodged, and on the other, the claim is that the appeal remained to be lodged due to the pandemic. Neither of the excuses is substantiated. The idea was to keep the pot boiling and to postpone execution to the extent possible.

16. Mr Bhobe pointed out that the execution proceedings have been ongoing since 2016. These execution proceedings were delayed on the grounds of the pendency of the writ petition, which was not even maintainable and subsequently withdrawn by the Applicants; the pendency of the application seeking condonation of delay of 929 days in instituting the first appeal. At least after the First Appellate Court dismissed the application seeking condonation of delay of 929 days, greater vigilance was expected of the Applicants. Still, even this Second Appeal was lodged after the delay of 493 days.

17. This is not a case where the Applicants have gained nothing from the delay. In fact, the record shows that the Applicants have gained much from such delays. By citing the pendency of proceedings, though instituted after considerable delays, the Applicants have been postponing the execution proceedings.

18. Even though the decree, in this case, was made in 2013, and there was no stay on the execution of this decree, for the last 10 years, the Applicants have succeeded in resisting the execution of the decree. This resistance is mainly on the grounds that their applications, which were filed late, have been pending. Thus, the Applicants almost have a vested interest in instituting the proceedings after the delay and taking utmost advantage of the situation. This strategy has gained the Applicants 10 years of stay in the suit premises without any interim relief from any Court or deposit of any compensation at market rates.

19. In the above circumstances, the explanation for the delay can hardly be styled as bonafide. No sufficient cause is shown to condone this delay. The Applicants have only offered excuses and no explanation. There is a delay at every stage, and the utmost advantage is derived from such delay, perhaps realising that the Respondent is 95. On realising that there is no substantial question involved in the accompanying second appeal, the attempt was simply to postpone the execution proceedings to the extent possible without lodging the appeal or securing interim relief.

20. Since this was an eviction decree case, even interim relief would usually require a deposit of compensation at market rates. But the applicants, taking full advantage of their negligence, have managed to continue in possession since 2013 without any interim relief or deposit of compensation at market rates, in defiance of the injunction issued by the Trial Court. All this was achieved by delaying the proceedings at each stage. Therefore, no bonafide are involved in the excuses now offered.

21. The argument that one of the Applicants is 82 years old is completely offset by the fact that even the Respondent is 95. Nothing on record indicates that the Applicants have no benefit from legal advice. Throughout, the Applicants have been represented by an Advocate. Therefore, simply saying that the Applicants should not suffer for want of proper advice cannot be a mantra to secure condonation of delay. In fact, the Applicants have succeeded in delaying the execution proceedings for almost 10 years even though there was no stay from any Court on the execution proceedings. The fact that the execution proceedings were going on was sufficient for the Applicants to be additionally vigilant. This is a case of negligence coupled with a lack of bonafide.

22. For all the above reasons, this application seeking condonation of delay is dismissed with costs.

M. S. SONAK, J.