



CNR No. MHSCA1-000928-2022

Presented on : 10.10.2022

Registered on : 25.01.2023

Decided on : 14.03.2023

Duration : 5 M 4 D

IN THE COURT OF SMALL CAUSES AT MUMBAI
(APPELLATE BENCH)

REVISION APPLICATION No.45 of 2023

Along with Exh. 7 (Stay application)

IN

MARJI NO.353 of 2018

IN

R.A.D. Suit No.1322 of 2006

Shri Sanjay Yeshwant Sawant)
Indian Inhabitant, Age : 40,)
Occupation : Service, residing at Room)
No. A-42, CS No.654/D, Malabar and)
Cumballa Hill Division,)
Off. Javjee Dadajee Marg, Tardeo Road,)
Tardeo, Mumbai-400 007,)
Mobile : 9321385851) Applicant
(Orig. Respondent)

Versus

Desh Bhushan Co-op. Hsg. Soc. Ltd.)
having it registered office at A51,)
Patil Estate, C.S. No.654/D, Malabar and)
Cumballa Hill Division, 278, Tardeo Road,)
Tardeo, Mumbai-400 007)
Registration No.BOM/HSG/3755 of 1972) Respondent
(Orig. Applicant)

APPEARANCE:

Mr. S. M. Shaikh, Learned Advocate for the Applicant

Mr. Bharat Mehta, Learned Advocate for Respondent

**Coram: - S. T. Soor, Addl. Chief Judge,
and
K. R. Rajput, Judge
Court Room No.2
Date : 14.03.2023**

J U D G M E N T : (Per S.T. Soor, Additional Chief Judge)

Original plaintiff has preferred present revision application against order dated 16.07.2022 passed by the trial Court in MARJI No.353 of 2018 in R.A.D. Suit No.1322 of 2006. By the impugned order, the trial Court allowed said MARJI filed by the defendant society for condonation of delay, if any, caused to it to file main MARJI for setting aside Consent Decree dated 14.08.2006 passed in the suit and directed to register the main MARJI.

2. Applicant and respondent herein were the original plaintiff and defendant in the suit. For the sake of convenience, they are referred to as per their original status in the suit.

3. Relevant facts leading to filing of the revision are that on 02.08.2006, plaintiff had filed above suit against the defendant society for declaration of tenancy contending that he was a tenant of a chawl which formed a part of the entire property known as Patil Estate, Tardeo, Mumbai. On 15.07.1995, defendant society entered into agreement of development with the plaintiff and agreed to give permanent alternate accommodation in newly constructed building. Hence plaintiff surrendered possession of tenement to the defendant society. Defendant society demolished the old chawl and constructed

new building up to the 8th floor but did not allot new flat to the plaintiff in spite of correspondence. However, parties entered into Consent Terms which resulted into passing of Consent Decree dated 14.08.2006 in the suit.

4. Contention of the defendant society is that one Seema Prakash Patil and Prakash Patil filed Suit No.117 of 2018 against the defendant society and others before the Hon'ble High Court in the month of April 2018. Defendant society received copy of plaint on 18.04.2018. On perusal of the same, defendant society learnt, for the first time, about consent decree dated 14.08.2006 in above suit. Thereafter, society took search on the website of this Court and learnt that in 59 RAD suits filed against defendant society, consent decrees have been passed. Hence defendant society applied for certified copies on 24.07.2018 and received the same on 31.08.2018.

5. One Mr. B. Shrinivas Nayak and Mr. Prakash Utekar had signed said consent terms dated 14.08.2006 in the suit. However, they and others had already resigned on 29.12.2004 and hence, they were not the member of managing committee or office bearer of society with effect from 01.01.2005. Defendant society did not pass any resolution purportedly dated 03.04.2007 or of any other date resolving to settle and enter into consent terms and/or authorizing said Mr. Nayak or Mr. Prakash Utekar to sign consent terms, vakalatnama or any other document and/or authorizing them to represent society and/or to attend the Court. The consent terms dated 14.08.2006 are not signed by authorized officer of the society. Mr. S.B. Patil, Mr. Prakash Utekar and Nayak have misused the letter head of society by playing fraud. Said consent decree is obtained by fraud. It is void and liable to be quashed and set aside.

6. After obtaining certified copies of each suit, defendant society consulted many lawyers to find the way to set aside consent decree. However, owing to peculiarity of the matter, none could help them with legal guidance. Society has made its level best efforts to find out appropriate legal practitioner who can advice in the case but it remained unsuccessful for much time. Intention was to intervene in the matter at earliest possible. At last, it finds an advocate and filed above MARJI. Delay is neither deliberate nor intentional. Hence prayed for condoning the days in filing MARJI and taking main Marji application on the record.

7. Plaintiff filed the reply and opposed the application. Contentions of the plaintiff is that the application is filed almost after 10 years of the consent terms hence grossly barred by law of limitation. Defendant was itself a signatory to the consent terms. Hence defendant cannot say that it was not aware about the consent terms. Defendant nowhere mentioned the date of knowledge of the consent terms.

8. Defendant is guilty of suppression of material facts. Defendant suppressed filing of S.C. Suit No.1524 of 2007 before the Hon'ble City Civil Court in which defendant had filed Chamber Summons No.233 of 2011 and plaintiff had filed reply dated 12.03.2011 and stated in paragraph 15 that there are 241 tenants existing on the suit property. So also, the DDR Cooperative had issued one letter dated 26.02.2009 under the R.T.I. Act giving information that old Deshbhushan Cooperative Housing Society committee i.e. Suresh Patil and others was existing from the period 2007 to 2012. So also, statements of chairman of the defendant society, Shri. Babu Raoji Shah and secretary Shashikant Vasant

Jadhav were recorded in Gawdevi Police Station in Crime no. 157 of 2016 in which they both have stated that they have knowledge in the year 2007 about said forgery i.e consent terms and other transaction. The old Deshbhushan Cooperative Housing Society submitted the letter of assessment of tenant to the Assist. Assessor and Collector, Assessment and Collection department of MCGM along with list of 241 tenants. Defendant society and old Deshbhushan Cooperative Housing Society filed consent terms before Cooperative Appellate Court in Appeal No. 171 of 2013 on 26.09.2013. Thereafter, one tenant Seema Vardhani and five others had filed Arbitration Application No.188 of 2014 before the Hon'ble High Court against defendant society. On 28.08.2014, said arbitration applications were withdrawn.

9. Defendant has not come before the Court with clean hands. No due diligence is shown by the defendant. Reasons given by the defendant for condonation of delay are not just vague but in fact ridiculous. Defendant failed to make out bonafide case to condone the delay. Application is nothing but an after thought attempt to defeat the rights of the plaintiff. Defendant is acting in concert and at the behest of the developer. Application is misuse and abuse of process of law. Hence prayed for rejection of the application.

10. After hearing advocate for the parties and perusing the record, the trial Court by impugned order dated 16.07.2022 allowed above MARJI and directed to register the main MARJI application. Being aggrieved and dissatisfied with the impugned order, plaintiff preferred present revision.

11. Plaintiff also filed application (Exh.7) and prayed for grant of stay to the impugned order. Defendant opposed the stay application by filing reply. Advocate for both the parties conceded for deciding stay application along with the revision.

12. Both parties filed voluminous documents on the record in support of their contentions. We have heard advocate for the parties and perused the record including the impugned order. Following points arise for determination. Our findings thereon for the reasons are as under :-

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1	Whether the impugned order is legal, proper and in accordance with law ?	Yes
2	Whether the impugned order needs interference in the revision ?	No
3	What order ?	Revision is dismissed as per final order.

R E A S O N S

POINT NOS. 1 TO 3 :-

13. Present revision has been filed under section 34 (4) of the Maharashtra Rent Control Act, 1999 (in short the 'MRC Act'). As per section 34 (4) of the MRC Act, this Court has to see whether the impugned order is legal, proper and in accordance with law. Full Bench of the Hon'ble Bombay High Court in the case of **Bhartiben Shah Vs. Smt. Gracy Thomas & Ors. [2013 (2) ALL MR 9]** while dealing with the scope and ambit of the power of revision under

section 34 (4) of the MRC Act held that “ Revision application is not maintainable in respect of a procedural order passed under the Code of Civil Procedure or the Evidence Act in a suit arising out of the MRC Act, if such order does not affect the rights and liabilities of parties under the MRC Act or any other substantive law. For an order to be revisable under section 34 (4) of the MRC Act, the order must affect the very existence of the suit or the foundation of the party's case in their pleadings and not merely a procedural order, not affecting the substantive rights of the parties, though such procedural order may ultimately affects the strength or weakness of the case of the aggrieved litigant which is to be finally determined at the trial while passing the decree in the suit or final order in the proceedings. After the revisional Court is satisfied about maintainability of the revision application, the revisional Court will consider whether the impugned order is according to law. However, “according to law” refers to the order as a whole, and is not to be equated to errors of law or of fact simplicitor. It refers to the overall order, which must be according to law, which would not be, if there is a miscarriage of justice due to mistake of law. Hence, merely breach of, or non-conformity with, the provisions of the Code of Civil Procedure or Evidence Act or similar other procedural laws, will not be a ground for interfering with the impugned order of the trial Court. The revisional powers are intended to be exercised with a view to subserve and not to defeat the end of justice. As a general rule where substantial justice has been done by order of the lower Court, the revisional Court will not interfere with it notwithstanding the fact that the reasons for the order are not correct or the order is improper or irregular”.

14. One of the contention of advocate for the plaintiff/applicant herein is that the trial Court allowed the application without recording the evidence of the parties and not followed due course of law as per guidelines in **Holya Mahale vs Raghunath Mahale, 2006(4) Mh.L.J.80**. We have gone through the judgment relied upon by advocate for the plaintiff. In the said case exparte decree was passed against which the defendant had preferred appeal along with application for condonation of delay. Said application was rejected for the reason that there are no sufficient grounds to condone the delay. In the Hon'ble High Court, advocate for the respondent conceded that the evidence was not recorded. It appears that by the consent of advocate for the parties, matter was remanded for recording evidence and final disposal.

15. In the present case, advocate for the plaintiff argued the MARJI application without raising any objection before the trial Court that evidence has to be recorded before hearing the MARJI application. When adverse order is passed against the plaintiff in MARJI application, he, for the first time, is raising this objection before this court in the revision. Further the impugned order does not affect the substantial rights of the plaintiff as he can contest the main MARJI application on the grounds stated in his reply. Judgment relied upon by advocate for the plaintiff is of the year 2006 passed by the single judge and it was not pertaining to the rights of the parties under the MRC Act. In the present case, the suit in which consent decree passed is pertaining to the rights of the parties under the MRC Act. Hence, in view of full bench judgment in the case of **Bhartiben** (supra), above contention of advocate for the plaintiff is not tenable at this stage.

16. Contention of advocate for the plaintiff/applicant herein is that defendant was aware about the consent decree. Same advocate is appearing for the defendant in this revision and he was also appearing for the defendant in various earlier proceedings. Reason stated in the application is not reasonable and bonafide. Hence cause shown for condonation of delay is not sufficient. Trial Court condoned the delay of 4422 days without sufficient cause and wrongly held that the defendant properly explained the delay. Hence he prayed for allowing the revision by setting aside the impugned order.

17. Contention of advocate for the defendant/respondent herein is that, defendant was not aware about the consent terms. Defendant society came to know about said consent decree when a copy of plaint in High Court Suit No.117 of 2018 filed by Seema and Prakash Patil praying that society and two others be directed to specifically perform agreement dated 18.07.2013 and for other reliefs was served to defendant society on 18.04.2018. There is reference of consent decree dated 14.08.2006 in the suit. Thereafter, society took search on the website of this Court and learnt that in 59 RAD Suits filed against defendant society, decrees have been passed. After obtaining certified copies of each suit, defendant society filed application for setting aside consent decree. Defendant society consulted many lawyers to find the way to set aside consent decree however, owing to peculiarity of the matter and circumstances of the case, none could help them with legal guidance. The society has made its level best efforts to find out appropriate legal practitioner who can advice in the case but it remained unsuccessful for much time. The intention was to intervene in the matter at earliest possible.

At last, it finds an advocate and thereafter, Marji application is filed. Hence delay is caused in filing above condonation application. Delay is neither intentional nor deliberate. He supported the impugned order and prayed for dismissal of the revision.

18. It is to be noted that present MARJI is filed for condonation of delay to file main MARJI application for setting aside the consent decree dated 14.08.2006 passed in the suit by the trial Court. It is pointed out from the record that members of managing committee of defendant society resigned on 29.12.2004 which includes said Shri B. Srinivas Nayak and Prakash Uttekar, office bearer of defendant society. Further, it is alleged that defendant society was not served with the suit summons. It is not in dispute that in all the suits in which consent terms were filed and consent decrees were passed, Shri B. Srinivas Nayak and Prakash Uttekar signed the consent terms. Since they resigned on 29.12.2004, they were not concerned with the affairs of the defendant society with effect from 01.01.2005.

19. Filing of High Court Suit No.117 of 2018 by Seema and Prakash Patil against the defendant society and two others for specific performance of an agreement dated 18.07.2013 is not in dispute. Service of summons of said suit on defendant society on 18.04.2018 is also not in dispute. There is reference of consent decree dated 14.08.2006 in the Suit. Service of summons in above Suit and filing of consent terms dated 14.08.2006 is seriously disputed by the defendant society.

20. It is to be noted that the plaintiff filed above suit on 02.08.2006 and the consent terms are filed on 14.08.2006 i.e. within

period of 12 days. When defendant seriously disputed the fact that suit summons were not duly served and the persons who entered into consent terms have no authority to sign and file said consent terms due to their resignations, knowledge of said consent terms cannot be attributed to the defendant society. Further whether the defendant society was duly served or not or whether the office bearers of defendant society who signed the consent terms were having authority to sign the same and whether the defendant society was really having knowledge of said consent terms are to be decided in the main MARJI application filed for setting aside consent decree.

21. There is serious allegation of fraud committed by office bearers of defendant society who entered into consent terms even after their resignations. According to the defendant society, it got the knowledge of consent terms in above suit when they received the summons in High Court Suit No. 117 of 2018 on 18.04.2018 and when they obtained the certified copies. As per Article 59 and the provisions of Section 17(1)(a) to (d) of the Limitation Act 1963, period of limitation of 3 years to set aside the consent decree begins to run when fraud is discovered. In the present case, defendant society discovered the fraud played by earlier office bearers of the society and when they received the summons in High Court Suit No. 117 of 2018 on 18.04.2018 and thereafter when they obtained certified copies. Hence the application (MARJI) is within limitation. Further, it is now well settled that the application for condonation of delay should be construed liberally and the Court should not take hyper technical or hypothetical view.

22. Considering the nature of controversy between the parties and the facts stated in the MARJI application for condonation

of delay to file main MARJI application for setting aside the consent terms, we hold that the defendant society shown sufficient cause for condoning the delay in preferring said MARJI application. We do not find any perversity in the impugned order. The trial Court, by referring the provisions of Article 59 and relying on the provisions of Section 17(1)(a) to (d) of the Limitation Act 1963, rightly held that period of limitation of 3 years begins to run when the defendant society discovered the fraud played by earlier office bearers of the society while entering into the consent terms and when they obtained certified copies. Thus the trial Court rightly allowed above MARJI application. Hence, the impugned order passed by the trial court is legal, proper and in accordance with law. It needs no interference in the revision. Accordingly revision is liable to be dismissed with costs. In the result, we answer point no.1 in the affirmative, point no.2 in the negative and as to point no. 3, we proceed to pass the following order.

O R D E R

1. Revision is dismissed with costs.
2. Stay application (Exh.7) stands disposed of accordingly.

I agree,

(K. R. Rajput)
Judge
C. R. No. 2
14.03.2023

(S.T. Soor)
Additional Chief Judge
C.R. No. 2
14.03.2023

Typed on : 27.02.2023

Checked & signed on : 14.03.2023