

(1990) 07 GUJ CK 0015

In the Gujarat High Court

Case No : Civil Revision Application No. 829 of 1985

Jivanmal Jethamal

APPELLANT

Vs

Mohmad Aliabdulla, Trust and Trustees Asgarali Ragu husain
Mulla and Another

RESPONDENT

Date of Decision : 07-07-1990

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 29

Citation : AIR 1991 Guj 105

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : H.M. Chinoy, for the Appellant; Shaikh, for the Respondent

Judgement

1. The petitioner has challenged the order passed Below Exh. 22 in Civil, Miscellaneous Application No. 120/83 by invoking the aid of the Provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter called "the Act" for short). When the Revision Application was called out today for hearing, learned Advocate for the petitioner Mr. Chinoy was absent and the learned Advocate Shri G. R. Shaikh for respondent was present. Having heard Mr. Shaikh and having examined the facts of the present case, this Court is of the opinion that the Revision is not maintainable under S. 29 of the Act but would be maintainable under S. 115 of the Civil Procedure Code. Hence it is "ordered to be converted into Revision Application under S. 115 of the Code of Civil Procedure.

2. The short facts giving rise to the present revision may be narrated at this stage. The present petitioner is the original defendant-tenant whereas present opponents are the original plaintiffs-landlords. They are hereinafter referred to as tenants and landlords respectively.

3. The Landlords initiated a legal battle by filing a Regular Civil Suit No. 83/80 in the Court of Civil Judge (J.D.); at Bhavnagar against the tenant for the decree of eviction. The tenant appeared and resisted the suit. The trial Court was pleased to decree the suit. The decree came to be passed against the tenant in the

aforesaid suit, on 3-4-1980.

4. The original defendant-tenant could not file appeal against that decree in time and therefore he presented a Memo copy along with the application under S. 5 of the Indian Limitation Act. The tenant in the said application under S. 5 of the Limitation Act that he could not prefer appeal against the ejectment decree on the ground of his illness. There was delay of 97 days as stated in delay condonation application Exh. I before the District Court. The impugned judgment and decree of eviction came to be passed against the tenant on 3-4-1983. Tenant on 2-5-1983 applied for the certified copies of judgment and decree and the same were ready for delivery on 24th May 1983 and tenant took it on 15th May 1983. The Memo of Appeal came to be filed in the District Court on 3-10-1983, along with the application for condonation of delay which is numbered as 120/ 83. Learned Extra Assistant Judge heard the said application for condonation of delay, Bhavnagar and it came to be rejected on 4-5-1985. Being aggrieved by the said order of dismissal of delay condonation application, the original-defendant-tenant has, now, come up before this Court in this revision application.

5. Learned Advocate for the petitioner was not present when the matter was called out. Mr. Shaikh learned counsel for the respondents contended that there is a gross delay without any satisfactory reason for condonation of delay of 132 days and therefore this Court should not condone the delay in this application. Prima facie the submission of Mr. Shaikh learned counsel for the Opponents appears to be subtle but not sustainable in view of the facts of the Present case. The appellate Court has found that there was gross carelessness on the part of the tenant in not filing the appeal in time. The trial Court observed that there is no satisfactory reason given to condone the delay. The Medical Certificate was produced at Mark 12/1 in the District Court to show that the tenant was advised rest on the ground of his sickness.

6. Undoubtedly, ordinarily no litigant would stand benefitted by filing an appeal late much less in a case of ejectment decree under the Bombay Rent Act. There is one more aspect in this matter which is not seriously considered by the learned Extra Assistant Judge with regard to the filing of application for certified copies. The ejectment decree came to be passed on 30-4-1983 and the tenant applied for certified copies on 2-5-1983. This aspect shows that the defendant-tenant had an animus to challenge the ejectment decree passed against him and not to treat the said verdict as final. Again, refusing to condone delay may result in a meritorious matter being thrown out at the threshold and cause of justice may be defeated. It is, therefore, expedient to direct the party in such a case to pay the cost for not filing appeal in time. No doubt, u/ S. 5 of the Indian Limitation Act reasonable satisfactory ground has to be shown. The defend ant-tenant contended that he was precluded from filing appeal against the ejectment decree in time on account of his illness. The Medical Certificate was filed at Mark 12/ 1. The production of medical certificate coupled with the fact that he had

applied immediately for certified copies of judgment and decree ipso facto would go to show that he wanted to challenge the eviction decree by filing an appeal. The revisional Court ordinarily in such matter would not interfere with finding of fact. But in the light of special circumstances of the present case this Court is inclined to interfere with the impugned order of the learned Extra Assistant Judge, at Bhavnagar. This Court is satisfied that there was sufficient and reasonable cause for not filing the appeal in time and therefore the dalai is required to be condoned for filing an appeal. The impugned order is manifestly erroneous and requires be quashing and setting aside.

7. Before parting it may be mentioned that the observation of this Court in this order should not in any way affect the merits of the appeal. The impugned order is set aside and the delay condonation application is allowed. The Appeal Memo shall be examined and registered by the District Court, at Bhavnagar, in accordance with law and on the condition that the tenant shall pay the cost of Rs. 1,500/- within a period of 15 days receipt of the file from this Court. The appeal will be decided on merits after hearing both the parties. Since the matter is very old, this Court is inclined to direct the Appellate Court to take up this matter and dispose it of in accordance with law as expeditiously as possible but not later than November 1990.

8. For the foregoing reasons the Revision is allowed. The impugned order is quashed and set aside. Rule is made absolute accordingly with no order as to costs of this revision.

9. Revision allowed.