

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**APPEAL FROM ORDER NO. 19 OF 2014
WITH
CIVIL APPLICATION NO. 2030 OF 2014
IN
APPEAL FROM ORDER NO. 19 OF 2014**

Dinkar S/o Haribhau Ambade,
Age: 54 years, Occu. Agriculture,
R/o Kamal Fabricators, Plot No. B-105,
M.I.D.C. Ahmednagar,
Tq. and Dist. Ahmednagar.

...Appellant
(Ori. Plaintiff)

versus

1. Nanasaheb S/o Haribhau Ambade
Age: 57 years, Occu. Agriculture,
R/o Rastapur, Tq. Newasa,
District Ahmednagar
2. Shri Balasaheb S/o Haribhau Ambade,
Age: 55 years, Occ. Business,
R/o Kamal Chemicals,
35, Industrial Co-op.Society,
Newasa, Road, Shrirampur,
Ta. Shrirampur, Dist. Ahmednagar.
3. Sow Anusaya Shivajirao Phatake,
Age: 59 years, occ. Household,
R/o Kharwandi, Tq. Newasa,
Dist. Ahmednagar.
4. Sow. Pushpa Popatrao Ambade,
Age: 50 years, Occ. Household,
R/o Pimpalwadi, Tq. Rahata,
Dist. Ahmednagar.

5. Shri Vivek Popatrao Ambade,
Age: 18 years, Occ. Education,
R/o Pimpalwadi, Tq. Rahata,
Dist. Ahmednagar.
6. Khusro Hamidullakhan Pathan,
Age: 45 yrs, occ. Agril.,
R/o Ambad, Tq. Ambad.
Dist. Jalna.
7. Shaikh Shahed An war Anisoddin
Age: 43 yrs, Occ. Agri & Business,
R/o Neknoor, Tq. & Dist. Beed.
8. Mohammad Isa Mohd. Ismail Bagwan
Age: 38 years, Occ. Agril., & Business,
R/o Ravivarpeth, Beed.
Tq. & Dist. Beed.
9. Shaikh Farukh Shaikh Ibrahim Bagwan
Age: 39 years, Occu. Agril & Business,
R/o Jamjam colony, Beed
Tq. & Dist. Beed.
10. Khais Rayes Binsairi,
Age: 44 yrs, Occ. Agril & Business,
R/o Old Mandai, Beed,
Tq. & Dist. Beed.
11. The Manager,
Mahanagar Co-op. Bank Ltd.
Ahmednagar, Branch Market Yard,
Ahmednagar.
12. The Manager,
Bank of Baroda,
Branch Wadala, Bahiroba
Tq. Newasa, Dist. Ahmednagar.
13. Rajendra S/o Raosaheb Patore,
Age: 34 years, occ. Agriculture,
R/o Bhanas Hivra, Ta. Newasa,
Dist. Ahmednagar.

14. Vithal S/o Balasaheb Lande,
Age: 36 years, occ. Business,
R/o Landewadi, (Sonai)
Tq. Newasa, Dist. Ahmednagar.

15. Kamlakar Nanasaheb Ambade,
Age: 39 years, occ. Agriculture
R/o Rastapur, Tq. Newasa,
Dist. Ahmednagar.

...Respondents
(Respondents No. 1 to 12
are Ori. Defendants)

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Mr. B.V. Wagh, Advocate for Appellant-Applicant
Mr. A.P. Bhandari, Advocate for respondents No. 1 and 3
Mr. P.K. Joshi, Advocate for respondent No. 12-Absent.
Mr. N.P. Dube, Advocate for respondents No. 13 and 14

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CORAM : A.I.S. CHEEMA, J.

DATED : 30TH JANUARY, 2015

ORAL ORDER:-

1. Heard learned counsel for appellant-original plaintiff, learned counsel for respondents No. 1 and 3 and learned counsel for respondents No. 13 and 14, finally. Learned counsel appearing for respondent No. 12 is not present although the matter has been listed. Other respondents are not present, though served.

2. Present appeal from order arises out of Miscellaneous Civil Application No. 10 of 2012 for condonation of delay, which was tendered by the plaintiff before District Judge,

Shrirampur against rejection of plaint in Special Civil Suit No. 9 of 2011 by Civil Judge, Senior Division, Newasa. In delay condonation application, application Exhibit-5 was moved for injunction, which came to be dismissed and the present appeal is filed against the order dated 21-11-2013.

3. It appears that after appellate court's order, present respondents No. 1, 3 and 4 parted with the property in favour of respondents no. 13 and 14 and they were required to be added. Respondent No. 15 is stated to be son of respondent No. 1 - original defendant.

4. Learned counsel appearing for respondents No. 13 and 14 submits that after purchasing the property, even they have created third party interest regarding part of the property. Looking to the manner in which the parties are conducting themselves, it would be appropriate that the District Judge decides the application for condonation of delay urgently and if delay is condoned, the appeal concerned till which time the parties should be restrained from creating third party interest.

5. Learned counsel for applicant submits that, Miscellaneous Civil Application No. 10 of 2012 was pending before the District Judge-1, Shrirampur, but because of bifurcation, now said application has been transferred to court of District Judge, Newasa, and must have been renumbered.

6. (A) Present appeal from order is disposed of with direction to the respondents, who are before this court that they shall not alienate, transfer or create third party interest in the suit property till decision of Miscellaneous Civil Application No. 10 of 2012 (as may have been renumbered before District Judge at Newasa) and if delay is condoned, till decision of the appeal concerned, by the District Judge, Newasa. The plaintiff would be at liberty to add present respondents No. 13 to 15 in the proceedings and if any further interest has been actually created, plaintiff may add the other concerned parties also in the matter before the District Court.

(B) District Judge, Newasa, District Ahmednagar is directed to decide the Miscellaneous Civil Application No. 10 of 2012 (as may have been renumbered at Newasa), as

expeditiously as possible, preferably within three months from today.

(C) Appeal from Order stands disposed of accordingly at the stage of admission.

(D) In the light of disposal of Appeal from order, nothing further survives for consideration in the pending civil application and the same stands disposed of accordingly.

(A.I.S. CHEEMA, J.)

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