

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11907 OF 2015

Shri Baban Kashinath Desai and
Ors

..Petitioners

Vs

Shri Prakash S. Nalawade and
Ors.

.. Respondents

Mr.Satyajeet Anil Rajeshirke, Advocate for Petitioners.
Mr. Ranjeet H. Patil, Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.
DATE : 11/12/2015

PC:

1. Not on Board. At the request of Mr.Rajeshirke, taken up for admission.
2. Heard Mr. Satyajeet Rajeshirke, learned counsel for the petitioners and Mr. Ranjeet Patil, learned counsel for respondent no.1. Mr. Rajeshirke orally applies leave to delete respondents no.2 and 3 as respondent no.1 is only contesting respondent. On the motion made by Mr. Rajeshirke, leave to delete respondents no.2 and 3 is granted. Amendment shall be carried out forthwith.
3. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged order dated 29.9.2015 passed by the learned trial Judge. By that order, the learned

trial Judge held that the application filed by the petitioners on 29.9.2015 is not tenable as by order dated 31.8.2015, this Court in Writ Petition No.4670 of 2015 granted liberty to the present petitioners to file fresh application within 4 weeks and period of 4 weeks expires on 28.9.2015. As the petitioner did not file application on or before 28.9.2015, his right to file such application is forfeited and application is not maintainable.

4. Mr. Patil strenuously opposed this petition on the ground that while passing the order on 31.8.2015, this Court made it clear that if application is not filed within four weeks, right to file the same would stand forfeited. In view thereof, the learned trial Judge was justified in rejecting the application on the ground of tenability as admittedly the petitioners did not file such application on or before 28.9.2015.

5. I have considered the submissions advanced by the learned counsel appearing for the parties. I have also gone through the order dated 31.8.2015. It is not in dispute that four weeks time was granted to the petitioners from 31.8.2015 for filing application under Order 6, Rule 17 by giving better particulars. It was also made clear that in case such application is not filed within 4 weeks, right to file the same would stand forfeited. It is also not in dispute that the petitioners filed application on 29.9.2015, i.e. one day after the time fixed by the

High Court for filing such application. In my opinion, ends of justice would be served by enlarging the period stipulated in the order dated 31.8.2015 and by setting aside the impugned order so that the application presented on 29.9.2015 shall be treated to have been filed within the period prescribed by this Court. The learned trial Judge is also requested to dispose of such application as early as possible. Hence, the following order.

- (i) Impugned order dated 29.9.2015 is set aside.
- (ii) Time stipulated in the order dated 31.8.2015 is enlarging upto and inclusive of 30.9.2015. The learned trial Judge shall treat the application filed by the petitioners on 29.9.2015 as being filed within the time stipulated by this Court and proceed to decide that application on its own merits in accordance with law as expeditiously as possible and preferably within three months from production of authenticated copy of this order.

(R.G.KETKAR, J.)