

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 2367 OF 2014

Shri. Raosaheb Abaji Nimbalkar (since deceased through L.R.s & ors)	.. Petitioners
vs.	
Santosh R. Khore and others.	.. Respondents

Mr. A.P. Kulkarni for the Petitioner.
Mr. Kayval P. Shah for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 23 NOVEMBER 2015.

P.C. :-

1] This Court by order dated 7 August, 2015, had put to notice that this petition may be heard and disposed of finally at the stage of admission.

2] Mr. Kulkarni, learned counsel for the Petitioners, makes a statement that Respondent No.1, i.e., contesting party has been served and presence of remaining Respondents are not really necessary for disposal of the present writ petition. Accordingly, leave is granted to delete the said Respondents. Necessary amendment to be carried out forthwith.

3] Accordingly, Rule. With the consent of and at the request of learned counsel appearing for Respondent No.1, Rule is made returnable forthwith.

4] The challenge in this petition is to the order dated 31 July 2013, by which Sub-Divisional Officer (SDO) has admitted the appeal instituted by Respondent No.1 against the order dated 10 November 1987 made by the Tahsildar.

5] The appeal came to be preferred by the Respondent No.1 after delay of over 24 years. Therefore, the appeal was accompanied by the application seeking condonation of delay. The grievance of the learned counsel for the Petitioners is that the application for condonation of delay has not at all been considered before making the impugned order admitting the appeal. The learned counsel for the Petitioners submits that unless delay in institution of the appeal is condoned, there is no question of the Appeal Court assuming jurisdiction in the matter.

6] If the impugned order is perused, it does bear out that there is no consideration of the application seeking condonation of delay. The impugned order has purported to proceed on *prima facie* satisfaction as to the merits of the matter. This is clearly not a proper approach, considering the magnitude of the delay. Even otherwise, the Appeal Court was required to consider whether sufficient cause

was shown for condonation of delay. Therefore, the Appeal Court was required to first dispose of the application made by the Respondent No.1 seeking condonation of delay. Only thereafter could the issue of admission of appeal arise. On this short ground, therefore, the impugned order will have to be set aside and is hereby set aside.

7] The matter is remanded to the SDO for consideration of the application made by Respondent No.1 seeking condonation of delay in the institution of appeal. Such application will have to be decided in accordance with law and on its own merits. It is made clear that this Court has not examined the cause shown and therefore, all contentions of all parties in this regard are kept open for decision by the Appellate Authority, i.e. SDO.

8] Rule is made absolute to the aforesaid extent. There shall be no order as to costs

9] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)