

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 689 OF 2015

Chand Hussain Patel & Ors.	..	Petitioners
vs.		
Masud Amin @ Amir Patel & Ors.	..	Respondents

Mr. R. S. Alange for Petitioners.
Mr. I. M. Khairdi for Respondent Nos. 1 and 2.
Mr. A. R. Metkari – AGP for Respondent No. 4.

CORAM : M. S. SONAK, J.
DATE: 29 JANUARY 2015

P.C. :-

1] Rule, Rule is made returnable forthwith with the consent of the learned counsel for the Respondents.

2] This petition challenges the order dated 16 January 2015, whereby the Additional Collector has declined to stay proceedings before the SDO without going into the issue as to whether the SDO, in the first instance was right in entertaining the appeal almost sixty two years beyond the prescribed period of limitation. The main ground for rejection of the stay application is that the same was filed ten months after the institution of the main appeal.

3] The reasoning of the Additional Collector is unacceptable. It is not necessary that in every case, application for interim relief, is required to be filed along with the memo of appeal. In a given case, when there is no apprehension that the matter before the Court where the proceedings are pending, have not proceeded with, the party may always apply for interim relief at some later stage.

4] That apart, in the present case the issue which the Additional Collector has to decide in the appeal is whether the SDO was right in entertaining the appeal almost sixty two years beyond the prescribed period of limitation. Therefore in such circumstances, if the SDO is permitted to proceed with the appeal, it is likely that the same would lead to multiplicity of proceedings.

5] Accordingly, the impugned order dated 16 January 2015 is set aside. The proceedings before the SDO in RTS Appeal No. 76 of 2012 (which is now renumbered as RTS Appeal No. 01 of 2013) are stayed during the pendency and final disposal of the appeal before the Additional Collector. Further, both parties are directed to maintain *status quo* in respect of the property which is the subject matter of the appeal before the Additional Collector. All this shall be during the pendency of the appeal before the Additional Collector.

6] The Additional Collector is directed to dispose of the appeal as expeditiously as possible and in any case within a period of four months from today.

7] Parties to appear before the Additional Collector on 9 February 2015 at 11.00 a.m., in order to obtain the schedule for disposal of the appeal.

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

(M. S. SONAK, J.)