

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8598 OF 2013

Sou. Kalpana Dilip Inamake and Anr.] ... Petitioners

Versus

Shri Suryakant Namdeo Bhujbal.] ... Respondent

Mr. V. S. Talkute for Petitioners.

Mr. S. P. Dighe h/f M. S. Athalye for Respondent.

CORAM :- M. S. SONAK, J.

DATE :- MARCH 25, 2015

P. C. :-

1. This petition impugns order dated 29/06/2013 by which the learned Civil Judge has declined to condone the delay in filing application under Order 9 Rule 13 of the CPC to set aside the Decree passed ex-parte.

2. In the case of *Shyam Sundar Sarma Vs. Pannalal Jaiswal and Ors.*¹, Hon'ble Apex Court has held that the disposal of an application under Order 9 Rule 13, as barred by limitation, is to be construed as an order made rejecting the application under Order 9 Rule 13 to set aside the Decree passed ex-parte. In view of this position, the impugned order is appealable under Order 43 Rule 1 (Sub-rule d) of the CPC.

¹ 2005 (1) SCC 436

3. This petition is accordingly not entertained. The petitioner is, however, at liberty to institute an Appeal from Order dated 29/06/2013. In case such Appeal is instituted within a period of four weeks from today, then the Petitioner shall be entitled to contend that the period between the filing of the present petition and its disposal, was period spent bonafide in pursuing the remedy against Order dated 29/06/2013.

4. With the aforesaid observations, the present petition is disposed of. There shall be no order as to costs.

5. For a period of six weeks from today, the execution shall not proceed. The Petitioners will be at liberty to apply for interim relief before the Appeal Court. However, the Appeal Court shall decide the application for interim relief upon its own merit and without in any manner being influenced by the circumstance that this Court has granted limited protection for a period of six weeks.

6. All contentions of all parties are left open for decision by the appeal Court in case the Petitioner institutes the Appeal within the period as prescribed.

(M. S. SONAK, J.)