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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 22 OF 2011
IN
SECOND APPEAL STAMP NO. 30270 OF 2010

Sangli, Miraj and Kupwad Municipal Corporation,
Sangli and another ... Applicants

Vs.

Shri Kausthubh Shrikant Pise and others ... Respondents

Mr.G.H.Keluskar, Advocate for Applicants.
Ms.Trupti A.Bharadi h/f Mr.Kedar J.Patil, Advocate for Respondents
No.1, 2, 3A, 4, 5, 6, 9, 10, 15, 18, 19, 20A.

CORAM : R. G. KETKAR, J.
DATE : 10th APRIL, 2015

P.C. :

1. Mr.G.H.Keluskar, learned Counsel for the applicants and
Ms.Trupti A.Bharadi, learned Counsel for the respondents No.1, 2,
3A, 4, 5, 6, 9, 10, 15, 18, 19, 20A.

2. This is an application for condonation of delay of 1 year
and 214 days in filing the Second Appeal.

3. In support of this application, Mr.Keluskar invited my
attention to paragraphs 6 to 8 of the application and submitted that
for the reasons stated therein, delay deserves to be condoned. He
further submitted that original plaintiffs instituted suit for injunction
restraining the defendants from demolishing the construction which
is going to be affected by road widening scheme under the Town

Planning Scheme No.3. The learned trial Judge dismissed the suit. The learned District Judge by order dated 12/01/2009 allowed the appeal and decreed the suit and restrained defendants No.1 & 2 from taking forcible possession of the suit properties in pursuance of notice dated 13/01/1999. While allowing the appeal, the learned District Judge held that section 149 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'Act') is not applicable as the act of the Corporation is not 'under the Act' within the meaning of section 149. Mr.Keluskar, therefore, submitted that suit instituted by the plaintiffs itself is not maintainable. In support of his submissions, he relied upon the decision of the Apex Court in the case of *Ram Nath Sao Vs. Gobardhan Sao*, **AIR 2002 Supreme Court 1201**.

4. No reply is filed opposing the application. Ms. Bharadi submitted that reasons set out in paragraphs 6 to 8 of the application do not constitute sufficient cause for condoning the delay.

5. I have heard the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. In the case of **Ram Nath Sao** (*supra*) the Apex Court held that by taking a pedantic and hyper-technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating

valuable right of such a party to have the decision on merit.

4. In view thereof, I find that in the facts and circumstances of the present case, arguable points are involved as regards the maintainability of the suit itself. Hence, Civil Application is allowed in terms of prayer clause (a) with no order as to costs. Office is directed to register the appeal, if it is otherwise ready.

(R. G. KETKAR, J.)