

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

901 CIVIL APPLICATION NO. 9677 OF 2005
IN SA/334/1992

PRALHAD N DHAGE
VERSUS
PANDURANG R RUKME DIED THROUGH L RS.

Shri. A.S. Bajaj, Advocate, for applicant.

Shri. A.R. Tapse, Advocate, holding for Shri. D.N.
Suryawanshi, for respondent Nos.1A to 1D, 2 and 3.

CORAM: T.V. NALAWADE, J.

DATE : 5th JULY 2016

ORDER:

1) The application is filed for condonation of delay of 111 days caused in filing review application. The applicant wants review of the order made by this Court on 6-10-2004 by which Second Appeal No.334/1992 is dismissed by holding that no substantial question of law as such is involved in the matter.

2) Heard learned counsel for the applicant. He was expected to show that there is sufficient cause for condonation of delay. He was further expected to show that there is some arguable case in review.

3) The submissions made and the record show that under the provisions the Hyderabad Tenancy & Agricultural Lands Act 1950 proceeding was started before the Tenancy Court for declaration under section 38E of the said Act by defendant No.2 of the present case. It is the contention of the present applicant that though his father was shown as owner on the record at the relevant time the property was partitioned by his father and the disputed property was given to him. It is his contention that no notice was issued of the said proceeding by the Tenancy Court either to his father or to him and so the declaration made under section 38E of the said Act is not binding on him and the said declaration needs to be set aside.

4) It appears that the trial Court had given decree by holding that apparently there was no notice given to the father. The first appellate Court has considered the material which includes the contentions made by his father in the tenancy proceeding. The defence of partition was taken in the tenancy proceeding also and after considering that defence the declaration under

section 38E was given. In view of this circumstance it cannot be said that there was virtually no notice to the father of the present plaintiff. In view of the record which was showing his father as owner and when the father was there in the tenancy proceeding, the present applicant cannot be heard again on his contention that there was partition. For taking decision on declaration the tenancy Court is expected to consider such case also and as per the record such case was considered by the tenancy Court. The tenancy Court has limited jurisdiction but that decision given operates as *res judicata* for that purpose even in Civil Court.

5) There are more circumstances against the present applicant though they are not specifically mentioned by this Court in the order by which the second appeal was dismissed. It appears that the matter was taken upto High Court when the declaration was made under section 38E of the aforesaid Act. The High Court dismissed the said proceeding. Separate mechanism is provided for considering such defences or contentions of landlord and tenant and that mechanism was used by the

present plaintiff's father. In view of these circumstances the Civil Court could not have accepted the contention that proper procedure was not followed and notice of declaration proceeding was not given to the plaintiff or his father. This Court has dismissed the appeal by holding that the Civil court has no jurisdiction. The aforesaid is the background for such finding. There is virtually no arguable case in the main matter, for review. Further the contentions made in the application are not sufficient to make out sufficient cause for condonation of delay.

6) The learned counsel for the applicant placed reliance on a case reported as **1987 Mh.L.J. 143 (Chandbi v. Narayan)**. Facts and circumstances of each and every case are always different. In view of the facts and circumstances already quoted which are relevant for the present matter matter, the observations made in the case cited supra are of no use.

7) In the result, the application stands rejected.

Sd/-
(T.V. NALAWADE, J.)

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