

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

**CIVIL APPLICATION NO. 4605 OF 2016
IN
REVIEW APPLICATION STAMP NO. 10590 OF 2016
IN
SECOND APPEAL NO. 125 OF 2015**

Sarang Avinash Shah

..... **APPLICANT**

V E R S U S

The Zilla Parishad Osmanabad
Thr. Chief Executive Officer,
Osmanabad & Ors.

..... **RESPONDENTS**

.....

Mr. S.M.Vibhute, Advocate for Applicant.

Mr. K.J.Ghute Patil, Advocate for R.Nos. 1 to 3.

.....

CORAM : T.V.NALAWADE, J.

DATE : 7th APRIL, 2016

ORAL ORDER :-

. The Application is filed for condonation of delay of 132 days caused in filing review application in respect of the decision given by this Court in Second Appeal No. 125 of 2015. Present applicant was appellant of the said proceeding. This Court has refused to interfere in the decision given by the District Court, by which the decree of injunction given by Trial Court is set

aside by the first Appellate Court and the Suit filed for relief of injunction by the present applicant is dismissed. Both sides are heard.

2. It is the case of the applicant that the decision given by this Court on 19/10/2015 was challenged by the present applicant by filing Special Leave Petition to Appeal (C) ..CC No. 3847/2016 in the Supreme Court, but the said proceeding was withdrawn on 04/03/2016 and the appellant/applicant wants now to file review application. It is contended that due to filing of Special Leave Petition, the aforesaid delay is caused. Present proceeding was presented on 30/03/2016. The said Special Leave Petition was withdrawn on 04/03/2016. No explanation is given in respect of the period from 04/03/2016 to 30/03/2016 by the present applicant. This single circumstance is sufficient for rejection of the present application.

3. Learned counsel for the applicant submitted that as the Special Leave Petition was filed immediately after the decision of the Second Appeal, this circumstance can be considered as a sufficient cause and the circumstance can be considered u/s 14 of the Limitation Act. This submission is not at all acceptable. It can not be said that in wrong forum, the proceeding was filed by the present applicant to challenge the decision given by this Court.

4. To get the condonation of delay, it was

necessary for the applicant to show that there is some arguable case in review proceeding. No such case was made out. The available material was considered by this Court and this Court held that the findings given by the District Court are the findings of facts and no interference is possible and no substantial question of law as such is involved. The learned counsel for the applicant submitted that the Award delivered by the Special Land Acquisition Officer in the Land Acquisition Reference in respect of the suit property was not properly considered and so there is possibility of change of the decision. This submission is also not acceptable. This Court has considered other relevant circumstance also viz. depositing of compensation amount in bank by the authority after the acquisition proceeding after making of the Award. Other subsequent developments viz. conduct of the owner and the record of development of the property after acquisition is considered by this Court. In the Award, it is mentioned that the possession was not taken over in the past, but due to aforesaid circumstance, it can not be said that the possession was never taken over. Further, there is record of many proceedings showing that the applicant is not certain as to how much portion is left after acquisition and due to possession of these persons. Thus, there was no case showing that there was possession over particular portion of particular side. In view of these circumstances, this Court holds that there is arguable case in review. Present proceeding can be allowed by using discretionary power, but for the aforesaid reason, this Court holds that it is not possible to

use the discretion.

5. In the result, Civil Application stands rejected.

[T.V.NALAWADE, J.]

KNP/C.A. 4605.2016 in S.A. 125.2015.odt