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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.134 OF 2013

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| 1. | Sairabee Sk. Karim
Age - 51 years, Occ - Household
R/o At Present Moti Colony,
Chikalthana, Aurangabad | APPLICANTS |
| 2. | Shamim d/o Sk. Karim,
Age - 23 years, Occ - Household
R/o At Present Moti Colony,
Chikalthana, Aurangabad | |
| 3. | Nasima d/o Sk. Karim,
Age - 20 years, Occ - Household
R/o At Present Moti Colony,
Chikalthana, Aurangabad | |
| 4. | Jahida d/o Sk. Karim,
Age - 17 years, Occ - Minor
under guardianship of petitioner No.1
being real mother | |

VERSUS

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| 1. | Sunil Murlidhar Kakade
Age -38 years, Occ - Agriculture
R/o Wadkha, Taluka and District - Aurangabad | RESPONDENTS |
| 2. | Uddhav Manjitrao Kakade
Age - 33 years, Occ - Agriculture
R/o Wadkha, Taluka and District - Aurangabad | |
| 3. | Jalimabee Sk. Fatru,
Age - 70 years, Occ - Household
R/o Wadkha, Taluka and District - Aurangabad | |
| 4. | Sk. Nabi Sk. Fatru
Age - 68 years, Occ - Agriculture
R/o Wadkha, Taluka and District - Aurangabad | |
| 5. | Sk. Rasool Sk. Fatru, | |

Age - 46 years, Occ - Agriculture
R/o Wadkha, Taluka and District - Aurangabad

6. Sk. Jaffar Sk. Fatru
Age - 44 years, Occ - Agriculture
R/o Wadkha, Taluka and District - Aurangabad
7. Janbee Sk. Shahnoor,
Age - Major, Occ - Agriculture
R/o Rasoolpura, Taluka - Khultabad
District - Aurangabad
8. Sk. Nizam Sk. Karim,
Age - Major, Occ - Agriculture
R/o Wadkha, Taluka and District - Aurangabad
9. Rajesh Jewellers Through its Proprietor
Rajesh Mugdiya, Kamgar Colony,
Chikalthana, Aurangabad
10. Somnath Automobile, Beed Road,
Chikalthana, Aurangabad
Through A. M. Kale,
Age - years, Occ - Business,
R/o Beed Road,
Chikalthana, Aurangabad **DISMISSED**
11. Abedabee Sk. Karim,
Age - Major, Occ - Household
R/o Beed Road, Chikalthana,
Aurangabad
12. Shahiahanbee Fatru
Age - Major, Occ - Household
R/o Beed Road, Chikalthana,
Aurangabad **DISMISSED**

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Mr. Ajit D. Kasliwal, Advocate for the applicants
Mr. V. P. Latange, Advocate for respondent No.1
Mr. A. S. Gandhi h/f Mr. P.H.Mehta, Advocate for respondent No.9

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 14th SEPTEMBER, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the appearing parties finally with consent.

2. This civil revision application has been preferred against order dated 26th February, 2013 passed by District Judge-4, Aurangabad in MARJI No.194 of 2008 condoning delay of one month and eleven days.

3. After hearing learned advocates, it transpires that it is the contention of respondents No.1 and 2 that they have purchased suit property from respondents No.4 to 6 and 8. They are *bona fide* purchasers for value without notice. They had come to know about pendency of suit for partition around end of March, 2008 from village *Talathi*. They were in possession of suit property pursuant to the sale deed and nobody had objected to their possession and further that the suit was not registered with the sub-registrar. It is further being contended that the vendors did not contest suit in collusion with the plaintiffs in order to defeat their rights to the suit property, nor the defendants in the suit had preferred any appeal. Upon getting knowledge, the

applicants had obtained certified copies of the judgment. They had filed objection petition before the Collector. The Collector refused to decide the question. For want of advice, appeal could not be filed within time and consequently, there was delay as aforesaid. Respondents No.1 and 2 further request to exclude period of pendency of proceedings before the Collector, pursuant to Section 14 of the Limitation Act, 1963. It is further contended that though the suit had been decreed on 31st August, 2006, however, since respondents No.1 and 2 had no knowledge of the suit proceedings, they could not file appeal within time.

4. Application for condonation of delay is resisted by present applicants respondents No.1 to 4 in MARJI NO.195 of 2008 contending that the property has been purchased during pendency of the suit and as such, is hit by section 52 of the Transfer of Property Act, 1882. It was incumbent that respondents No.1 and 2 to have got themselves made aware about the proceedings, which they failed to do. It was further purportedly denied that respondents No.1 to 3 had no knowledge of the judgment and decree and that the period of proceedings before the Collector would not be liable to be excluded under section 14 of the Limitation Act.

5. It was contended on behalf of respondent No.7 in said proceedings - present respondent No.5 that the property has been purchased knowing about pendency of the proceedings, at a very low price. Respondents No.1 to 3 cannot be termed as *bona fide* purchasers for value without notice.

6. Application for condonation of delay (MARJI No.195 of 2008) was argued on either side and several citations were relied upon. Thereafter, the appellate court has allowed the application MARJI No.195 of 2008 under order dated 26th February, 2013 considering the delay to be one month and eleven days.

7. Mr. Kasliwal, learned advocate points out Article 116 Clause (b) of the Limitation Act stating that computation of delay ought to be from the date of decree and not from the date of knowledge, even if the date of knowledge is perceived not to have been debated by present applicants. As such, whole consideration of the application for condonation of delay is improper and without application of proper Article of the Limitation Act.

8. Learned advocate further contends that respondents No.1 to 3 had knowledge of pendency of the suit, which can be borne out from the evidence and further that the respondents have

sufficient remedy to approach revenue authorities claiming their share. He submits that looking at the application and the material as has been available on record, it may not be said that there is sufficient cause for condonation of delay. He, therefore, requests to allow the revision application and set aside the impugned order, which according to him would bring proceedings to a permanent end.

9. On the other hand, countering aforesaid submissions, Mr. Latange, learned advocate contends that respondents No.1 and 2 are agricultural labourers by occupation, having limited literacy level and as such, fluctuating evidence appearing may not be given out of context and proportion importance, as the cause would be lost in the same. He submits that discretion has already been exercised by the appellate court in favour of respondents No.1 to 3 and as such, it would not be appropriate for the high court to re-appreciate the evidence. Apart from aforesaid, he goes on to submit that though it may appear to a mistake, it ostensibly appears that the appellate court has considered, delay is of only one month and eleven days, however, what weighed with the appellate court is that said period has been computed for delay from the date of knowledge. It has been submitted by him that the earlier period stands

explained since respondents No.1 to 3 had no knowledge about the suit proceedings pending and the decision thereon and as such, the same stands accounted for. He, therefore, contends that ado being made about the delay being only of one month and eleven days will have to be considered appropriately as has been considered by the appellate court in substance. He submits that, it is only ostensibly considered that the delay is of one month and eleven days, whereas travel through the entire judgment would show that it has been taken into account that the knowledge has been in the month of August, 2008 and from then the delay has been computed. He submits that overall situation emerges that the delay as such, stands explained, for the whole period from the date of decree. He therefore, urges the court not to consider the matter pedantically.

10. In addition to aforesaid, he submits that since leave to appeal has been granted, the application for condonation of delay which has been filed is only an exercise for technical compliances making the appeal maintainable. As a matter of fact, it has other facet, since leave to appeal has been granted, the appeal is as good as let in for contest and in the circumstances, this application for condonation would not have been necessary to be filed, however, in order to make procedural

compliances complete, the application has been filed and the same deserves to be considered accordingly.

11. After having heard learned advocates for the parties and upon perusal of the impugned judgment, it appears that respondents No.1 and 2 come from *muffosil* area and have limited literacy level and do not appear to be in the position to appreciate implications of procedural requirements, had moved application for condonation of delay. It further transpires that as far as date of knowledge of judgment and decree is concerned, there is no rebuttal evidence in substance on behalf of present applicants.

12. Having regard to that leave to appeal has already been granted and the appellate court has construed reasons as are appearing for condonation of delay, to be sufficient cause, in the discretionary powers of this court it does not appear to be a case wherein any intervention and interception is required to be caused. Revision application as such, stands rejected. Rule stands discharged.

13. It is, however, made clear that observations made in this order have limited efficacy as far as and to the extent of dismissal of the present civil revision application and no further.

Since the proceedings pertain to 1995, the appellate court would do well to proceed with the same expeditiously and dispose of the appeal as early as possible, preferably within a period of eight months from the date of receipt of writ of this order.

14. In view of disposal of civil revision application, civil application No.9883 of 2013 does not survive and stands disposed of.

[SUNIL P. DESHMUKH, J.]

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