

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

CIVIL APPLICATION NO.5089 OF 2016

IN

RAST NO.12396 OF 2016

IN

W.P.NO.9717 OF 2011.

**Pralhadrao S/o Bapurao Desai and others Vs. Mariba S/o Irba
Dharmakare since deceased through his L.Rs. Drupadabai W/o
Mariba Dharmakare and others.**

WITH

CIVIL APPLICATION NO.5090 OF 2016

IN

RAST NO.12398 OF 2016

IN

W.P.NO.9735 OF 2011.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.P.G.Godhamgaonkar, advocate for the Applicants.
Mr.G.G.Suryawanshi, advocate for Respondent Nos.1 to 4

CORAM : S.V.GANGAPURWALA, J.

Date : 18.04.2016.

PER COURT :

1. Heard.
2. These are applications for condonations of delay caused in filing Review Applications. The Applicants have filed Review against the order passed by this Court in W.P.No.9717 and 9735 of 2011.

3. Mr.Godhamgaonkar, learned counsel for the applicants submits that the Writ Petitions were filed against the order of the Maharashtra Revenue Tribunal, rejecting the application for condonation of delay in filing restoration application. The petitioners/applicants herein had filed Revision before the MRT. The same was in respect of proceedings U/s 38-E of the Hyderabad Tenancy and Agricultural Lands Act. The said Revision was dismissed in default. There was delay of about six years two and half months in filing restoration application. The MRT, rejected the application for condonation of delay in filing restoration application. The said order is confirmed by this Court and the order of this Court is confirmed by the Apex Court in SLP.

4. Mr.Godhamgaonkar, learned counsel submits that the merits of the matter were required to be considered. The Respondents herein could not have been declared as new protected tenants. There was no evidence in this regard. The applicant/landlord did not have land more than three family holdings. All these aspects were not brought to the notice of this Court while deciding the Writ Petitions. According to the learned counsel, the doctrine of fairness and good faith is required to be considered. When the non-applicants are not entitled for any declaration in law then by default, the non-applicants would succeed. The learned counsel relies on the judgment of the Apex Court in a case of **“Board of**

Control for Cricket, India and another Vs. Netaji Cricket Club and others” reported in **AIR 2005 Supreme Court 592 (1)**.

5. I have considered the submissions. While dismissing the Writ Petitions, this Court had considered that the applicants/petitioners did not even state when the notices in execution were served upon them and that from the date of service of the notice, the application for restoration was filed immediately or not. They had not even stated when they got the knowledge of the execution being proceeded further. This Court considered the conduct of the petitioners/applicants and thereafter by speaking order dismissed the Writ Petitions. The order of this Court was assailed before the Apex Court. The Apex Court dismissed the Special Leave Petition, thereby confirming the order of this Court.

6. This Court in its review jurisdiction would not sit in appeal over the order passed. Review can not be treated as an appeal in disguise. It is not a case of fraud or suppression of facts or mis-statement of fact so as to exercise the powers of Review. Even there is no explanation for delay of more than 1500 days caused in filing the present Review Applications.

7. Considering the above, the Review Applications as well as the applications for condonation of delay are rejected. However,

there shall be no order as to costs.

(S . V . GANGAPURWALA, J .)

Dt.18.04.2016.
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