

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

WRIT PETITION NO. 5939 OF 2013

Sk. Akheel Sk. Raheem

..PETITIONER

VERSUS

Kahmrunnisa Begum Syed Ahemad and Others

..RESPONDENTS

....

Mr. G.R. Syed, Advocate for petitioner.

Mr. A.A. Mukhedkar, Advocate for respondents.

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CORAM : T.V. NALAWADE, J.

DATED : 28th SEPTEMBER, 2016

ORDER :

1. The petition is filed to challenge the judgment and order in Miscellaneous Civil Application (R.J.E.) No. 16 of 2013 which was pending in the Court of District Judge-1, Parbhani. The said proceeding was filed by the present respondent for condonation of delay of 190 days caused in filing appeal against the judgment and decree in Regular Civil Suit No. 277 of 2011 which was pending in the Court of Civil Judge, Senior Division, Parbhani. The District Court has allowed the application and delay is condoned. Heard both sides.

2. Learned Counsel for petitioner submitted that the ground

which is not mentioned in the application filed for condonation of delay is considered by the District Court and sufficient cause was not shown.

3. The suit was filed by the present petitioner for relief of declaration that he has become owner due to adverse possession and he had forceably taken possession of the land about 15 years prior to the suit. He had also prayed for relief of injunction. It appears that on the basis of so called consent terms filed in the suit, the Court has given aforesaid relief to the plaintiff.

4. It is the case of the defendant that there was no such consent given by them and only after coming across the mutation made in the revenue record they realised that something has happened. They have not contended that their advocate had not informed them about the decision but the contentions made in the application covers everything. This contention was accepted by the District Court for condonation of delay. The aforesaid circumstances shows that there is arguable case in the appeal. The condonation of delay is within the discretion of the Court and the appellate Court is not expected to interfere lightly when such discretion is used.

5. Learned Counsel for petitioner placed reliance on ***AIR 2010 SC 3043 (Balwant Singh (dead) Vs. Jagdish Singh and Others.)*** and ***AIR 2011 SC 1199 (Lanka Venkateswarlu (D) by L.Rs. Vs. State of Andhra Pradesh and Others)***. The facts and circumstances of each and every case are always different. This Court holds that in the present matter there is no possibility of interference. Learned Counsel for petitioner prays for interim protection, same is refused. Petition stands dismissed.

(T.V. NALAWADE, J.)

SSD