

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

**42 CIVIL APPLICATION NO. 9874 OF 2016
IN
RAST/18316/2016
WITH
CA/9875/2016
IN
RAST/18316/2016**

**SHAIKH GULAB SHAIKH SARDAR
DIED LRS MANAN AND ORS.**

VERSUS

**SHAIKH SHABBIR SHAIKH LAL
AND ORS.**

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Mr. V.C.Solshe, Advocate for Applicants.

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CORAM : T.V.NALAWADE, J.

DATE : 1st AUGUST, 2016

ORAL ORDER :-

. The application is filed for condonation of delay caused in filing Review application. The applicants/original appellants in Second Appeal No. 884 of 2006 wants the review of the Judgment delivered by this Court on 23/10/2015.

2. It appears that Special Leave Petition No. 7208 of 2016 was filed in the Supreme Court with the application for condonation of delay. The Apex Court condoned the delay and then the Special Leave Petition was heard. By the order dated 09/05/2016, the Apex Court refused to interfere in the Judgment delivered by this Court and so the Special Leave Petition was dismissed. Learned counsel for the applicant placed reliance on the case reported as (2000) 6 Supreme Court Cases – 359 [Kunhayammed & Ors. Vs. State of Kerala & Anr.] and submitted that as the Appeal was not entertained by the Apex Court and the Special Leave Petition was dismissed, that circumstance can not be considered against the right of the appellants to file review application in this Court.

3. This Court has heard the learned counsel for the applicants with the presumption that the review is tenable.

4. For getting the condonation of delay, the applicants are required to satisfy this Court on 2 things viz. (i) there was sufficient cause and (ii) there is some arguable case in the main matter, Second Appeal.

5. Learned counsel for the applicants submitted that the Suit was not filed for relief of partition, but it was filed for getting half portion on the basis of title and in the said form the Suit was not tenable. This proposition can not be accepted in view of the reasonings given by this Court and this Court had held that there was no partition as contended by the defendants in the Suit. As per the provisions of the

Muslim Law, the shares are fixed and so for the possession of the shares fixed under Personal Law, the Suit was considered. This point can not be re-opened again.

6. Learned counsel for the applicants submitted that even if it is presumed that the property was owned by Sk. Sardar, after his death all the sharers including the widow would have become entitled to get their shares as per Muslim Law, but the share of mother of defendants was not carved out. It can be said that as such defence was not taken and the defendants had come to the Court with the specific case that partition had taken place and the suit property was given to Tarabee and Tarabee had given the property to the defendants, after considering that defence, the matter was decided.

7. Following 2 substantial questions of law were considered by this Court.

[i] Whether on the facts and in the circumstances of the present case, the plaintiffs are entitled to claim share in the suit property as legal heirs of deceased Tarabee and if yes, to what extent ?

[ii] Whether on the facts and in the circumstances of the present case, the defendants have proved ouster of the plaintiffs in respect of the suit properties and have established plea of adverse possession, whereby they claimed to have perfected title by prescription ?

8. The aforesaid discussion and points show that everything necessary for the decision of the Second Appeal, was considered by this Court. Learned counsel for the applicants now wants this Court to consider the matter from different angle, as submitted in the present proceeding. That is not possible in view of the nature of the defence taken in the Written Statement.

9. The aforesaid discussion shows that there is no arguable case in the review application. It is contended with regard to the delay that the decision of this Court was challenged by filing Special Leave Petition in the Supreme Court and after disposal of the said matter, the present proceeding is filed and so the delay can be considered and exempted under the provisions of Section 14 of the Limitation Act. This submission is not at all acceptable. The remedy was available to approach the Apex Court against the decision of this Court and the defendants/appellants did approach the Apex Court, got the decision though not on merits. In view of these circumstances, provision of Section 14 of the Limitation Act can not be used. Thus, sufficient cause is not shown.

10. In the result, Civil Application stands rejected.

[T.V.NALAWADE, J.]