

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

*CIVIL APPLICATION NO. 693 OF 2016
IN
CIVIL APPLICATION NO. 1735 OF 2013
IN
SECOND APPEAL (ST) NO. 25312 OF 2012
ALONG WITH
CIVIL APPLICATION NO. 900 OF 2013
(Not on board. Taken on board.)*

Shri Appa Arjun Dharne,
R/at 162/C-43, Samtanagar,
Kandivali (E), Mumbai – 400 101. ... Applicant/Appellant

v/s

1 A. The State of Maharashtra,
1. The Collector, Sindhudurg at Oros,
Taluka-Kudal, Dist.Sindhudurg & ors. ... Respondents

Mr.Anil Kadam for the applicant/appellant.

None present for the respondents.

*Coram: N.M. Jamdar, J.
Dated: 29 April 2016*

P.C.:

The Appellant had filed a suit bearing No.26 of 2006 in the Court of Civil Judge, Senior Division, Sindhudurg at Oros, challenging the acquisition of land pursuant to the resettlement scheme under the Maharashtra Project Affected Persons Rehabilitation Act, 1986. The suit was tried by the learned Civil Judge, senior Division, Sindhudurg at Oros, who held that the Appellant has failed to prove that the acquisition

proceedings are bad in law. The Court also took note of Section 22 of the Act which bars jurisdiction of the Civil Court to challenge the acquisition proceedings. The appeal filed by the Appellant to the District Court has also been dismissed by the learned District Judge confirming that the suit filed by the Appellant challenging the acquisition proceedings was not maintainable. Thereafter the present second appeal is filed in the year 2013 after delay.

2 On 8 August 2013, in Civil Application No.900 of 2013 for condonation of delay, the following order came to be passed and the civil applications and the second appeal were disposed of:

'P.C.:

None appears for the applicant when called out. On the previous dates also i.e. on 17.7.2013, 24.7.2013, 31.7.2013 and 7.8.29013, none had appeared for the Applicant, therefore, the matter was kept today as and by way of last opportunity. Today also the same position continues. Hence the above civil application for condonation of delay in filing the Second Appeal stands dismissed for non-prosecution. In view of the dismissal of the civil application for condonation of delay in filing the second appeal, the above second appeal and the Civil Application No.901 of 2013 for stay, do not survive and the same to accordingly stand disposed of.'

Thereafter, Civil Application No.1735 of 2013 was taken out in respect of restoration of the Civil Application No.900 of 2013. In this civil application also none appeared and the application was dismissed for want of prosecution on 29 February 2014. The Applicant thereafter has taken this third civil application for restoration. In this application same apaty

continues. On the last occasion, none appeared. The matter is kept on board today for dismissal. I called upon the learned counsel to address the Court on merits since, throughout, the Appellant has not appeared and has only filed applications for setting aside the earlier order, and thereafter not attending.

3 I have gone through the decisions of both the Courts. In view of Section 22 of the Act of 1986, the suit was not maintainable. There are various decisions of the Apex Court which have laid down the position of law that the suit challenging the acquisition proceedings is not maintainable. Even on facts, the Courts have found that procedure in acquisition has been followed. In the circumstances, there is no merit in the appeal itself. However, for the purpose of disposal, Civil Application No.693 of 2016 is allowed. Civil Application No.1735 of 2013 is taken up on board and is accordingly allowed. Civil Application No.900 of 2013 is taken up on board for consideration. The delay in filing the appeal is of 53 days. The application is without any explanation whatsoever.

4 In the circumstances narrated above and for chronic default in prosecuting any of the applications, I have called upon the learned counsel for the Appellant to address on merits from which it is clear that the proceedings instituted by the appellant were not maintainable in Civil Court and, therefore, even if the application for condonation of delay is allowed and second appeal is taken up for consideration, there is no merit in the same. Furthermore, the application is bereft of any explanation for delay. The manner in which the entire litigation is conducted is an abuse of the process of law and shows nothing but complete apathy. In the

circumstances, Civil Application No.900 of 2013 is rejected. The second appeal consequently does not survive and is disposed of.

(N. M. JAMDAR, J.)