

Sequeira

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

*CIVIL APPLICATION NO. 1834 OF 2015
IN
R.C. NO. 485 OF 2001*

Mr.Jitendra Mansukhlal Parekh & ors. ... Applicants /
Appellants
V/s.

Andhra Valley Power Supply Co. Ltd. ... Respondent.

Mr.T.D.Deshmukh, for Applicants.
Mr.Rushil Mathur i/b Mulla & Mulla C.B.C., for the Respondent.

*Coram : N.M. Jamdar, J.
Friday 22 July, 2016.*

P.C. :-

Civil Application is filed seeking condonation of delay of 14 years and 187 days with a prayer to recall the order dated 6 October 2000 and to restore the Second Appeal to file.

2. The Suit was filed by the Applicants for possession of some lands. The Suit was partly decreed by Judgment and Order dated 27 February 1981. The Appeal filed by the Appellants was dismissed by the District Judge, Kalyan on 16 February 1999. Thereafter the

Second Appeal was filed. The Second Appeal was listed before the Registrar Judicial on 6 October 2000 and conditional order was passed for removal of office objections. Since the office objections were not removed, the Appeal was dismissed in view of the order dated 6 October 2000. Thereafter the present Civil Application is taken out after lapse of almost 15 years. The only reason given in the Civil Application is that some Application of the year 2001 is pending and the papers were not available. This reason is entirely unsatisfactory. It is not possible that if the Appellants were desirous of pursuing their remedy, they would not make any inquiries whatsoever for period of 15 years.

3. The learned counsel for the Applicants stated that the Appellants have good case on merits and would suffer if the Appeal is not restored. In view of this submission I have examined the decision of both the Courts. The Suit for possession of the Applicants was partly decreed. It was urged by the learned counsel for the Appellants that the entire land Survey no.36A was not acquired as can be seen from the decision of the learned District Judge. However the Appellant made out a clear case that he is the owner of the entire land. Before the appellate Court, no such argument was made that the Sale deed in respect of the same portion of the land was executed. Had this argument been made the Respondents would have met the same and there would have been a

discussion and debate on this issue. The Applicants are simply trying to take advantage of certain observations on which there was no debate before the learned District Judge. The Respondent which is a power supply company is in possession of the suit property since 1950. In view of this position, the rights that were accrued to the Respondents by dismissal of the Second Appeal 15 years back cannot be lightly taken away. As regards the other lands, Suit has been decreed against which no appeal has been filed by the Respondents and it is not that Applicants have become landless. He is pursuing this Appeal for taking possession from a power Company who is in possession for last 66 years. In the circumstances, no case is made out for considering the Civil Application. The Civil Application is accordingly rejected.

(N.M. Jamdar, J.)