

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

WRIT PETITION NO.9790 OF 2016

Dilip Rajaram Raut and others

.... Petitioners

versus

Narmada Estate Pvt. Ltd. & others

... Respondents

Mr.Asif Husain h/f Mr.Yusuf Khan i/b. Mr.Ravindra Lokhande for the Petitioners.

Mr.Madhav J. Jamdar for Respondent No.1.

Ms M.S. Bane, Panel Counsel for Respondent No.2-State.

CORAM : R.G. KETKAR, J.

DATE : 20th OCTOBER, 2016

PC. :

1. Heard Mr.Asif Husain, learned Counsel for petitioners, Mr.Madhav Jamdar, learned Counsel for respondent No.1 and Ms M.S. Bane, learned Counsel for respondent No.2-State at length. Rule. Learned Counsel for respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated

08/08/2016 passed by the learned District Judge – 10, Pune in Civil Miscellaneous Application No.556/16. By that order, the learned District Judge dismissed the application taken out by the petitioners for condonation of delay of 114 days in filing the appeal against the judgment and decree dated 12/02/2016 passed by the learned Judge of the Small Causes Court below Ex.42 and 53 in Regular Darkhast No.107/12. By order dated 12/02/2016, learned Trial Judge rejected the applications Exhibit 42 and 53 filed by the petitioner.

3. During the course of hearing of this Petition, I indicated to Mr.Jamdar that the learned District Judge has not considered the reasons given by the petitioners for condonation of delay. In particular, petitioners have contended that the period of Summer Vacation requires to be excluded while considering the aspect of condonation of delay. Petitioners also contended that because of the severe drought condition and as also financial crisis, they were unable to file the appeal in time. In view of the decision of the Apex Court in the case of *State of Nagaland Vs. Lipok A.O. & Ors., (2005) 3 SCC 752*, as also having regard to the shortness

of delay, this Court is inclined to condone the delay. Mr. Jamdar, therefore, sought time to take instructions.

4. Upon taking telephonic instructions, Mr. Jamdar submits that by consent of the first respondent the impugned order may be set aside. The learned District Judge may be directed to decide the appeal in a time bound manner. The learned Counsel for petitioners and respondent No.1 agree that parties will appear before the learned District Judge on 15/11/2016, and for that purpose, no fresh notice be issued to them.

5. In view thereof, by consent of the parties, the Petition is disposed of in the following terms;

- (1) Impugned order dated 08/08/2016 passed by the learned District Judge is set aside;
- (2) Civil Miscellaneous Application No.556/16 for condonation of delay is allowed;
- (3) The Registry shall register the Appeal, if it is otherwise ready;
- (4) Parties agree that they will appear before the learned District Judge on 15/11/2016, and for that purpose, no fresh notice be issued to them;

- (5) The learned District Judge is requested to decide the appeal as early as possible, and in any case, within three months from the date of appearance of the parties;
- (6) All other contentions of the parties on merits are expressly kept open.
- (7) Liberty is reserved to the respondent No.1 to apply before the learned District Judge by imposing conditions on the appellants while granting stay to the eviction decree.
- (8) Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)