

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

WRIT PETITION NO. 8066 OF 2015

**FATIMABI BAKSHU SHAIKH AND OTHERS
VERSUS
NAGAR PANCHAYAT THROUGH ITS CHIEF OFFICER AND OTHERS**

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Advocate for Petitioners : Shri S.M.Kulkarni.
AGP for Respondents/ State : Shri S.K.Tambe.
Advocate for Respondent 1 : Shri Ashwin V. Hon.
Advocate for Respondent 2 : Shri Bhavar Nitin R.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd August, 2017

Per Court:

1 The Petitioners are aggrieved by the order dated 31.07.2015 passed by the learned District Judge-2, Kopargaon by which applications Exhibits-39 and 40 have been rejected. Consequentially, the order dated 24.07.2015 dismissing Miscellaneous Application No.12/2011 is sustained.

2 I have heard the learned Advocates for the respective sides.

3 M.A. No.12/2011 has been filed for condonation of delay in filing the appeal before the Appellate Court. The Appellate Court dismissed M.A. No.12/2011 on 24.07.2015 at 05:00 pm for want of appearance of both the parties.

4 Application Exhibit-38 was filed for appointing a member of Saibaba Sansthan for the mediation. Exhibit-38 was disposed of as M.A. No.12/2011 was already dismissed.

5 It is apparent that M.A. No.12/2011 was dismissed for want of appearance of both the sides. Same is for condonation of delay in preferring the appeal by these Petitioners.

6 The Petitioners filed Exhibits 39 and 40 for setting aside the order dated 24.07.2015 and seeking restoration of M.A. No.12/2011. By the impugned order dated 31.07.2015, both applications Exhibits 39 and 40 are rejected since M.A. No.12/2011 had been dismissed.

7 Needless to state, if the Petitioners/ Appellants in appeal proceedings desire to lead further evidence or bring some oral and documentary evidence on record, such application under Order 41 Rule 27 of the Code of Civil Procedure, has to be considered only at the stage of hearing the main appeal in the light of the judgments delivered by the Honourable Supreme Court in the matter of Malyalam Plantations Limited vs. State of Kerala and another, AIR 2011 SC 559 and in the matter of Union of India vs. Ibrahim Uddin and another, (2012) 8 SCC 148. Such an application could not be entertained at a stage prior to deciding the main appeal.

8 Application Exhibit-40 was filed on the same day i.e. 24.07.2015 on which date the order dismissing M.A. No.12/2011 was

passed.

9 Considering the above, I do not find that the impugned order dated 31.07.2015 could be sustained when the application for restoration of M.A. No.12/2011 was filed on 24.07.2015 and has been rejected on 31.07.2015.

10 In the light of the above, this Writ Petition is disposed of with the following order:-

- (a) The impugned order dated 31.07.2015 is quashed and set aside. Consequentially, applications Exhibits-39 and 40 are allowed.
- (b) The order dated 24.07.2015 dismissing M.A. No.12/2011 is also set aside by imposing costs of Rs.5000/- (Rupees Five Thousand) which the Petitioners shall deposit before the Trial Court within a period of THREE WEEKS from today and in any case, on or before 11.09.2017. The Respondents herein would be at liberty to withdraw the said costs in equal proportion without conditions.
- (c) The Trial Court shall, therefore, consider M.A. No.12/2011 on it's own merits and shall decide the same as expeditiously as possible and in any case on or before 29.12.2017.
- (d) The litigating sides shall cooperate with the Trial Court and shall refrain from seeking adjournment on frivolous grounds.

The Trial Court shall be at liberty to reject such adjournment applications and may impose costs, if required.

kps

(RAVINDRA V. GHUGE, J.)