

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

29 CIVIL APPLICATION NO. 14211 OF 2016
IN CRAFT/32791/2016 WITH CA/8931/2017 IN
CRAFT/32791/2016

SAYYED HUSSAIN SAYYED CHAND DECEASED THROUGH HIS L.RS.
SAYYED HAFIJA HUSSAIN AND
VERSUS
AMINABI SHAIKH ABDUL RAHMAN DECEASED THROUGH HER L.RS.
MUKTAR HUSSAIN SHAIKH ABDU

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Advocate for Applicants : Mr. Latange V.P.
Advocate for Respondents No. 1B to 1G : Ms. Kazi S.S.

CORAM : K. L. WADANE, J.

DATE : 11th September, 2017

ORDER:

1. Heard learned counsel appearing for the applicants and learned counsel appearing for the respondents.

2. Learned counsel appearing for the applicants submits that, the suit filed against the present appellant was decreed on the ground of bonafide requirement. That order was assailed before the learned District Judge, who confirmed the decree passed by the learned trial court. The order passed by the District Judge was assailed in the writ petition which was filed on 01.08.2000 and ultimately it was disposed of on 05.10.2016. During the pendency of the writ petition interim protection was granted in favour of

the present appellants. The same protection is continued in this present revision application and which is operating till today. Delay of 5855 days has been caused, as the applicants were contesting the proceeding bonafidely in this Court without jurisdiction. Therefore, the provisions of section 14 of the Limitation Act are relevant, therefore, those are reproduce :

“Section 14 : Exclusion of time of proceeding *bona fide* in Court without jurisdiction :

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which,

from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908, the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the Court or other cause of a like nature."

3. From the record it appears that after disposal of the writ petition on 05.10.2016 immediately this criminal revision application along with application for condonation of delay is filed on 21.10.2016. Therefore, from the record it appears that the present applicant was prosecuting the proceedings bonafidely, but it was within the Court, who has no jurisdiction. Ultimately, due to the passing of the orders in the writ petition the applicant was constrained to file this revision application along with application for condonation of delay.

4. Learned counsel appearing for the respondents opposes the application on the ground that the respondents respondents have also moved an civil

application for direction to the applicants to vacate the premises on the ground that the suit premises is in dilapidated condition and the concerned Municipal Council has issued notice to the respondents to demolish the structure.

5. In view of the above and as per the provisions of section 14 of the Limitation Act, delay caused for filing application can be condoned. Accordingly, it is condoned.

6. Civil application is disposed of.

(K. L. WADANE, J.)

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