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IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION******CIVIL APPLICATION NO.922 OF 2015******WITH******SECOND APPEAL (ST) NO.15358 OF 2015******WITH******CIVIL APPLICATION NO.923 OF 2015******WITH******CIVIL APPLICATION (ST) NO.6382 of 2017***

Smt. Rajeshri Pandurang Solshe & Ors. ..Applicants.

V/s.

The State of Maharashtra & Ors. ..Respondents.

Mr.Anand Patil for the Applicants in both Civil applications and the Appellants.

Mr.Yogesh Dabke, A.G.P. for Respondent Nos.1 to 3.

Mr.S.S.Patwardhan for Respondent No.4.

Coram : N.M.Jamdar, J.

Date : 10 April 2017

ORAL ORDER

This Civil Application is taken out for condonation of 634 days delay in filing the Second Appeal challenging the Judgment and Order passed by the learned District Judge in Regular

Civil Appeal No.11/2013. The Judgment and Order passed by the learned District Judge was itself arising from an application for condonation of 379 days delay in filing the first appeal. Considering the delay at both stages, I have looked into the main grievance of the Appellant.

2. The Appellant filed a suit bearing Regular Civil Suit No.418/2006 against the Collector, Tahsildar and a private Respondent. The Appellants, 18 in number, apprehended an action by Respondent-State of taking possession of their structures and handing over the same to the private Respondent.

3. The learned Civil Judge by the Judgment and Order dated 17 November 2011, partly decreed the suit and directed that the Collector and Tahsildar should not take possession of the properties of the Appellants without following the due procedure. It is against this decision they filed an appeal along with an Application No.1/2013 for condonation of 379 days delay, which was rejected.

4. The main grievance of the Appellants that even though they are occupying the land which belongs to the Government they are in longstanding possession. According to them, such longstanding possession need to be recognized and the Respondent-State cannot take any high-handed action. The learned counsel for the Appellants also argued that what is ultimately sought by the

Appellants is following of the due procedure by the State. That being so the entire dispute can be resolved by directing the State Government to take steps only after following the due procedure. The learned AGP states that in any case, the State Government will have to take steps as per the law.

5. Once such steps as per law are taken by the State, under requisite enactment adequate remedy is provided to the Appellants to put forth their grievance. The learned counsel for the Appellants submitted that the Appellants are desirous of making applications for regularization of their structures. No separate directions are necessary in that regard as it is always open to the Appellants to make such applications and it is open for the State to consider the same on its own merits. The learned counsel for the Appellants submits that in view of the above, the main grievance of the Appellants in the litigation stands redressed.

6. Accordingly, the Civil Application No.922 of 2015 for condonation of 634 days delay in filing the Second Appeal, in view of the averments made therein, is allowed. The Second Appeal itself is taken up for consideration by consent forthwith and is disposed of as under:

7. The Judgment and Order dated 17 November 2011 passed by the learned Civil Judge, Senior Division in Civil Suit

No.418/2006 is confirmed. Respondent Nos.1 and 2 will follow due procedure if they seek to take possession from the Appellants. Once such an action is initiated by the Respondent-State, all contentions of the parties are kept open.

8. Continuing the ad-interim order granted in this proceedings is not warranted in view of the above observations that action will have to be initiated and concluded as per the due procedure, which adequately protects the interest of the Appellants

9. The Second Appeal is accordingly disposed of. In view of the disposal of the Second Appeal, Civil Application No.923 of 2015 also stands disposed of.

10. Civil Application (St.) No.6382 of 2017 is not on board. Taken on board during the hearing of the Second Appeal. Perused the application. There is no objection by the Respondents for allowing this application as well. The Civil Application is allowed in terms of prayer clauses (a) and (b).

(N.M.Jamdar, J.)