

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1333 OF 2018

GANGADHAR RAMDAS KALAMKAR AND ANOTHER
VERSUS
THE SUB DIVISIONAL OFFICER AHMEDNAGAR AND OTHERS

Advocate for Petitioners : Shri A.K. Gawali.
AGP for Respondent No. 1 : Shri S.R. Yadav-Lonikar.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 05th February, 2018

PER COURT :

1. The petitioners are aggrieved by the order dated 18/11/2017 and consequentially, the order dated 24/04/2017 (original order dated 23/01/2017).

2. Learned counsel for the petitioners has strenuously criticized the impugned order, primarily for the reason that a delay of two years and eleven months has been condoned casually and the issue whether the appeal preferred by the respondent was maintainable or not, has not been considered by the M.R.T. as well as by the S.D.O. Reliance is placed on the judgment of the Hon'ble Apex Court in the matter of Smt. Jatan Kanwar Golcha Versus M/s. Golcha Properties Private Ltd., [AIR 1971 SC 374] and on the judgment of the Gujarat High Court in the matter of Thakor Jamasher Khanji Tajkhanji & another Versus Rajgor G.V. Deceased by heirs

Vinodrai Ganpatram Rajgor & others [1998 (1) G.L.H. 717], to support the contention that when a third party prefers an appeal, it has to first seek leave/permission to file an appeal.

3. Notwithstanding the strenuous submissions of the learned advocate for the petitioners, I am of the view that while an authority /Tribunal or Court deals with an application for condonation of delay, the merits set out in the pleadings of the main proceedings are not to be pre-judged.

4. Learned counsel submits that whether the respondent had a right to prefer an appeal, should have been gone into by the authority dealing with the application for condonation of delay. In short, the contention is that an issue should be cast as to whether leave to file an appeal should be granted or not, notwithstanding the fact that an application for condonation of delay is the subject matter before the concerned authority. Consequentially, the petitioners contend that whether respondent Nos. 2 to 6 have preferred the appeal, whether they were in connection with the suit property, should be an issue which should be considered.

5. The Sub Divisional Officer was dealing with an application for condonation of delay of two years and eleven months. Whether

the main proceedings have any merit and whether the applicant is a stranger to the lis, could not have been gone into. This issue turns upon the merits of the proceedings. The application for condonation of delay is to be considered only to the extent of whether the regular proceedings should be registered after condonation of delay. As such, I do not find that the contention of the petitioners could be sustained that while considering the application for condonation of delay, the authority should have gone into the aspect as to whether the appeal was maintainable.

6. In so far as the delay is concerned, the S.D.O. as well as the M.R.T. has concluded that the reasons cited did not indicate laches on the part of the applicants. The Hon'ble Apex Court in the matter of Collector, Land Acquisition, Anantnag Versus Mst. Katiji [AIR 1987 SC 1353], has held that technicalities cannot over bear legal rights. The Hon'ble Apex Court has elaborately considered the principles to be taken into account while condoning delay, in paragraph No. 3 of the said judgment.

7. It requires no debate that when the main proceedings would be taken up by the S.D.O. for adjudication, he would consider all the contentions of the litigating sides, inclusive of the contention of the petitioners that the appeal was not maintainable. All objections can

be gone into by the concerned authority.

8. Considering the above, this petition being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

S.P.C.