

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

942 CIVIL APPLICATION NO. 14099 OF 2016
IN SAST/28093/2016 WITH SA/345/2016

SAPANA BAPURAO RATOLIKAR AND OTHERS
VERSUS
VYANKATRAO DIGAMBARRAO KANDHARKAR DIED LRS
SANDHYA AND OTHERS

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Advocate for Applicants : Mr. S. V. Chandole
AGP for Respondents-State : Mr. S. N. Kendre
Advocate for Respondents no. 1/1 to 1/4: Mr. Milind Patil

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CORAM : V. K. JADHAV, J.
DATED : 13th APRIL, 2018

PER COURT:-

1. Heard.
2. Learned counsel for the applicants submits affidavit in reply. The same is taken on record.
3. Learned counsel for the applicants submits that though the applicants have filed cross-objection in the pending appeal before the first appellate court preferred by the original defendants, to the extent of finding recorded on issue no.8 by

the trial court, the first appellate court has not considered the said cross-objection for the reason that it was not filed within time and there was considerable delay in filing the same. Learned counsel submits that it is well settled that cross-objection can be filed even after expiry of the statutory period of one month, as may be allowed by the court. Learned counsel has placed his reliance on the following two cases to substantiate his contentions :

- 1) **Mahadev Govind Gharge and others vs. Special Land Acquisition Officer**, reported in **2011(5) Mh.L.J. 532** and
- 2) **State of Maharashtra vs. Kulu Ladku Mhatre**, reported in **2011 (4) Mh.L.J. 741**.

4. Being aggrieved by the judgment and order passed by the first appellate court, the present applicants have preferred Second Appeal No.345 of 2016. However, as per the legal advise given to them, they have not preferred any separate second appeal so far as rejection of cross-objection is concerned and as such the delay has been caused in filing this second appeal against the order of rejection of the cross-objection.

5. Learned counsel for the respondents submits that the first appellate court has rejected the said cross-objection by order dated 05.08.2015 and the appellants have preferred Second Appeal No. 345 of 2016 on 27.04.2016. Learned counsel submits that the applicants have not explained the said period.

6. It appears that the first appellate court has rejected the cross-objection only on the ground that the same was not filed within the period of limitation. Thus, the first appellate court has not decided the cross-objection on merits. Consequently, the applicants remained under impression that if the same ground is raised in the second appeal already filed before the court, there is no need to file separate second appeal against the rejection of the cross-objection. In view of the same, I am inclined to condone the delay caused in filing the second appeal against the order of rejection of the cross-objection. However, the applicants are also required to be saddled with costs for the inaction on their part for certain period. Hence, I proceed to pass the following order.

ORDER

- I) Civil application is allowed in terms of prayer clause “B” subject to costs of Rs.2,000/- (Rs. Two thousand only) to be paid by the applicants to the respondents, within four weeks from today.
- II) Civil application is accordingly disposed of.

(V. K. JADHAV, J.)

vsm/