

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10277 OF 2012

Shri Laxman Rama Khot (Salunkhe)	... Petitioner
v/s	
Shri Murlidhar Pandurang Bongale, since deceased through his legal heir Sudhakar M. Bomngale and others	... Respondents

Mr P.D. Dalvi for Petitioner.
Ms A.R.S. Baxi for Respondent Nos.1A to 1D.

CORAM : B.P. COLABAWALLA, J.

DATE : 13th DECEMBER, 2018

P.C.:

1. Rule. Respondent Nos.1A to 1D, who are the only contesting Respondents, waive service. With the consent of Respondent Nos.1A to 1D, rule is made returnable forthwith and heard finally.

2. This Writ Petition has been filed seeking to challenge the order passed in Civil Miscellaneous Application No.304 of 2006 dated 18th December 2012. Initially, the Petitioner along with Respondent Nos.2 to 4 herein had filed Civil Miscellaneous Application No.190 of 2004 before the Appeal Court wherein

it was prayed that the abatement of Regular Civil Appeal No.30 of 2018 be set aside and the delay to bring the legal representatives of Respondent – Murlidhar Pandurang Bongale be condoned. This Miscellaneous Application was dismissed for default on 10th March 2006. It was to restore this Miscellaneous Application No.190 of 2004 that Civil Miscellaneous Application No.304 of 2006 was filed in which the impugned order is passed. In this Application, it was the case of the Applicant (Petitioner herein) that there was a delay of eight months and that the delay was not intentional. It was further averred that the Applicant (Petitioner herein) as well as Opponent No.4 (Respondent No.24 herein) were agriculturists and were not aware of the provisions of law. Since the main Appeal was in respect of their rights and which rights are valuable one, they prayed for condonation of delay of eight months.

3. This Application was opposed by the original Plaintiffs and the Appeal Court rejected this Application. It is in these circumstances that the present Writ Petition has been filed.

4. I have gone through the impugned order in great detail. It is not in dispute that the Petitioner and Respondent Nos.2 to 4 are agriculturists. The explanation given for the delay was that the Petitioner is an old person and was ill. The further explanation given was that he is an agriculturist and is not well

versed with the law. It was on these grounds that the delay was sought to be explained.

5. On going through the papers and proceedings in this Writ Petition, I find that the Appeal Court has taken a very hyper technical approach in dismissing the Application filed by the Petitioner. I do not think that the Petitioner (Appellant before the Appeal Court) should be non-suited on hyper-technical grounds and ought to be given an opportunity to argue his case. In these circumstances the impugned order is set aside and Civil Miscellaneous Application No.304 of 2006 is allowed in terms of prayer clauses (a) and (b).

5. Miscellaneous Application No.190 of 2004 is restored to the file of Appellate Court and which shall be heard by the Appellate Court expeditiously on its own merits and in accordance with law.

6. Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

(B. P. COLABAWALLA, J.)