

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8361 OF 2017

Gavtya Jivlya Andher (since deceased)
through legal heirs

(a) Navsubai Madhukar Ayare & Ors.

.. Petitioners

Vs.

Deena Pramod Baldota & Ors.

.. Respondents

Mr.RA.Thorat, Senior Advocate i/by Mr.Pradeep J. Thorat for the petitioners.

Mr.Y.S. Jahagirdar a/w Mr.Shailendra Kanetkar & Mr.Amit Mehta i/by M/s.Mahimtura & Co. for the respondent no.1.

Mr.S.H.Kankal, AGP for the respondent nos.2 & 3 -State.

CORAM : R.D. DHANUKA, J.

DATE : 12th June 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 23rd June 2017 passed by the learned Sub-Divisional Officer allowing the application filed by the respondent no.1 for seeking amendment to the application for condonation of delay.

2. The matter was argued for some time. Mr.Jahagirdar, learned counsel appearing for the respondent no.1, on instructions, states that his client is ready and willing to withdraw the application dated 7th February 2017 filed by his client before the Sub-Divisional Officer inter alia praying for amendment to the application for condonation of delay in terms of the Schedule appended thereto. He further states that his client would file a fresh application seeking amendment to the

application for condonation of delay in terms of the draft amendment tendered before this Court. Statement is accepted. The application dated 7th February 2017 filed by the respondent no.1 before the learned Sub-Divisional Officer in Tenancy Appeal No.DLN/TNC/A-03/2006 is allowed to be withdrawn. In view of withdrawal of the said application for amendment, the impugned order passed by the learned Sub-Divisional Officer on 23rd June 2017 does not survive. Draft amendment is marked "X" for identification.

3. The respondent no.1 would be at liberty to make a fresh application for amendment to the application for condonation of delay in terms of the draft amendment handed in before this Court.

4. Application for amendment shall be filed by the respondent no.1 within three weeks from today and shall serve a copy thereof upon the petitioner's advocate simultaneously. The petitioner would be at liberty to file an affidavit for opposing the said application for amendment.

5. Learned Sub-Divisional Officer shall decide the application for amendment to the application for condonation of delay afresh and on its own merits. It is made clear that this Court has not expressed any views on the issue as to whether the respondent no.1 has made out a case for seeking amendment to the application for condonation of delay. All contentions of both the parties are kept open. The learned Sub-Divisional Officer shall decide the application afresh without being influenced by the observations made and conclusion drawn in the impugned order dated 23rd June 2017.

6. The learned Sub-Divisional Officer shall make an endeavour to dispose of the said application for amendment to the application for condonation of delay within eight weeks from the date of first meeting. It is made clear that the respondent no.1 would be at liberty to rely upon the orders passed by this Court and the contents of the writ petition filed in this Court relating to the subject matter of the same property.

7. Writ petition is disposed of in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.