

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10661 OF 2016

Shri. Bapu Bhanudas Kale Patil

...Petitioner

Versus

Sou Parubai Sandeepan Kulal
and others

...Respondents

....

Mr. Ajay A. Joshi, Advocate for the Petitioner.

Mr. Rajaram V. Bansode, Advocate for Respondent No.1.

Mr. S.D. Rayrikar, AGP, for Respondents No.2 and 3.

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CORAM : R. G. KETKAR, J.

DATE : 21st NOVEMBER, 2018

P.C.

1. Heard Mr.Ajay A. Joshi, learned counsel for the petitioner, Mr. Rajaram V. Bansode, learned counsel for respondent No.1 and Mr.S.D. Rayrikar, learned A.G.P. for respondents No.2 and 3-State, at length.

2. Leave to amend so as to challenge the order dated 21.7.2018 passed by the Sub-Divisional Officer, Malshiras Sub-Division, Akluj in R.T.S. Appeal No.32/2016 is granted. Amendment shall be carried out forthwith.

3. Rule. Learned Counsel for the respective respondents waive service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made

returnable forthwith and the petition is taken up for final hearing.

4. This Petition takes exception to the orders (1) dated 29.3.2016 passed by the Sub-Divisional Officer, Malshiras Su-Division at Akluj (for short, 'S.D.O.') in application for condonation of delay caused in filing R.T.S. Appeal No...../2015, (2) dated 12.8.2016 passed by the Additional Collector, Solapur in R.T.S. Second Appeal No.150/2016 as also (3) dated 21.7.2018 passed by the S.D.O. in R.T.S. Appeal No.32/2016. By the first order, the S.D.O. condoned the delay of 15 years caused in filing the appeal. Aggrieved by that decision, the petitioner preferred Second Appeal before Additional Collector, Solapur. By order dated 12.8.2016, the Additional Collector dismissed the appeal. By order dated 21.7.2018, S.D.O. partly allowed the appeal, however, stayed the matter till the decision in the present petition.

5. The matter was heard on 19.11.2018 and was adjourned till today so as to enable Mr. Bansode to take instructions as to whether respondent No.1 is agreeable for setting aside the impugned orders and for rehearing of application for condonation of delay. After taking instructions from respondent No.1, Mr. Bansode submits that by consent the impugned orders may be set aside and the application for condonation of delay may be restored to the file of S.D.O., Akluj for deciding the same in accordance with law.

6. In view thereof, by consent of parties, the impugned order dated 29.3.2016 passed by the S.D.O., Akhuj as also the order dated 12.8.2016 passed by the Additional Collector, Solapur in R.T.S. Second Appeal No.150/2016 are set aside. Application filed by respondent No.1 before the S.D.O., Akhuj for condonation of delay in filing appeal is restored to the file of S.D.O. for deciding the same in accordance with law. The parties agree that they will appear before the S.D.O., Akhuj on 03.12.2018 and for that purpose no fresh notice be issued to them. The S.D.O. Akhuj will pass a reasoned order on the application for condonation of delay after hearing both sides in accordance with law. As the application for condonation of delay is restored to the file of S.D.O. Akhuj the consequential order dated 27.7.2018 passed by the S.D.O. Akhuj in R.T.S. Appeal No.32/2016 stands set aside. It is only after deciding the application for condonation of delay and depending upon its outcome, the S.D.O. will proceed with the hearing of the appeal. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)