

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 11 OF 2019

EXECUTIVE ENGINEER, MSEDCL, HINGOLI
VERSUS
SUSHMA BANDU RATHOD AND OTHERS

Advocate for Appellant : Mr. D.P. Deshpande.
Advocate for Respondent No. 1, 4 & 5 : Mr. Y.K. Delmade.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 14.02.2019

PER COURT :

1. There is no dispute that the trial Court has passed an order dated 29.01.2018, in Miscellaneous Civil application No. 76/2017, by which, it has declined to condone the delay of one year and fourteen days caused in filing of the said application for seeking an order of setting aside the ex-parte judgment dated 07.01.2016, delivered by the trial Court in Special Civil Suit No. 02/2015.

2. Needless to state, the said ex-parte judgment is open to preferring a Regular Civil Appeal under Section 96 of the Code of Civil Procedure. The petitioner has preferred a Miscellaneous Civil Application No. 76/2017, seeking condonation of delay in filing a Miscellaneous Civil Application seeking the recalling of the ex-parte judgment. By order dated 29.01.2018, the said application is rejected, which was filed under Order IX Rule 13 by the defendant.

As such, in view of Order XLIII Rule 1 (d), an Appeal from Order would be maintainable.

3. In view of the above, these proceedings will have to be filed before the concerned District Judge as the first appellate Court.

4. Leave is granted to the appellant to withdraw this Appeal from Order and prefer an appropriate proceeding within four weeks from today. Needless to state, the time spent by the petitioner in this Court from 09.03.2018, till the passing of this order would be considered as a good ground for seeking condonation of delay. Considering that an amount of Rs. 6,87,972/- has been deposited by the petitioner before the executing Court and on the basis of which this Court had granted ad-interim protection to this appellant, the request of the appellant to continue this relief for a period of four weeks is accepted.

(RAVINDRA V. GHUGE, J.)