

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

901 SECOND APPEAL NO. 450 OF 2018

SAPANA BAPURAO RATOLIKAR AND OTHERS
VERSUS
VYANKATRAO DIGAMBARRAO KANDHARKAR DIED
L.R.S. SANDHYA AND OTHERS

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Mr. S.V.Chandole, Advocate for Appellants.

Mr. G.K.Sontakke, Advocate for R – 1.

Mr. S.N.Morampalle, A.G.P. for R – 2 & 3.

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CORAM : V.L.ACHLIYA, J.

DATE : 26/09/2019

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ORAL ORDER :

1. Being aggrieved by the order dated 05/08/2015 passed below Exh. 33 in R.C.A. 23/2012 by District Judge – 1, Ahemadpur, District Latur, the appellants/original plaintiffs have preferred this Second Appeal.
2. Heard learned counsel for appellants and respondent No. 1.
3. Learned counsel for appellants assailed the impugned order with contention that no period of limitation provided for filing cross objection under Order XLI Rule 22 of C.P.C. It is submitted that even in absence of any prayer made seeking condonation of delay in filing

cross objection, the first Appellate Court ought to have condoned the delay in filing cross objection. In support of the submissions, learned counsel has referred and relied upon the decision of Apex Court in the case of ***Mahadev Govind Gharge and others V/s Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka reported in 2011 (5) Mh.L.J. 532 and decision in the case of State of Maharashtra V/s Kalu Ladku Mhatre reported in 2011 (4) Mh.L.J. 741.*** Learned counsel further placed reliance on the decision of Delhi High Court in the case of ***Shri Krishan Gopal V/s Haji Mohammed Muslim and Others reported in AIR 1969 Delhi 126.***

4. On the other hand, learned counsel for respondent No. 1 supported the order passed by first appellate Court. It is pointed out that Order XLI Rule 22 (1) of C.P.C. itself provides that the cross objection to be filed within one month from the date of service of notice of appeal. It is pointed out that no cross objection as contemplated under Order XLI Rule 22 of C.P.C. has been filed in the case. The appellants have simply filed application to treat the same as cross objection. By referring sub section (2) of Order XLI Rule 22 of C.P.C. learned counsel pointed out that the procedure has been provided for filing cross objection. However, no cross objection as provided under Order XLI Rule 22 of C.P.C. filed by appellants.

5. On due consideration of submissions advanced, I am of the view no case is made out to entertain this Appeal. Order XLI Rule 22 of C.P.C. reads as under.

" (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection] to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the appellate Court may see fit to allow.

(2) Form of objection and provisions applicable thereto :- Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

[Explanation :- A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree is, wholly or in part, in favour of that respondent.

(3) [***]

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to appeals by indigent persons shall, so far as they can be made applicable, apply to an objection under this rule. "

6. Plain reading of Order XLI Rule 22 of C.P.C. spell out that the cross objection is to be filed by the respondent in an appeal preferred against the decree within one month from the date of service of notice of appeal of the date fixed for hearing the appeal or within such time as the appellate Court may see fit to allow. In the case in hand, the appeal was filed in the year 2011. The notice of appeal issued and served in the year 2011. The alleged cross objection in the nature of application was presented after more than 2 years of filing of appeal and service of notice. Neither any explanation was given for not filing cross objection within time nor any relief was sought to entertain the cross objection beyond the period as provided under Order XLI Rule 22 of C.P.C. So also, the cross objection was not filed in a manner as provided under sub section (2) of Order XLI Rule 22 of C.P.C. The cross-objection filed to be separately numbered and same to be decided along with appeal. However, the appellants have not taken any pains to file cross objection in form of

memorandum of appeal as provided under Order XLI Rule 22 of C.P.C. Simply one application was presented during the pendency of appeal raising objection as to challenge raised to Issue No. 8 decided by trial Court. In the facts and circumstances of the case, same could have been treated as an objection raised under Order XLI Rule 33 of C.P.C. In absence of cross-objection filed by appellants in terms of Order XLI Rule 22 of C.P.C. the trial Court committed no error in law in rejecting the application.

7. In that view, there is no perversity in the order passed by the first appellate Court. The appeal raises no substantial question of law. I am, therefore, not inclined to entertain this appeal. Accordingly, the appeal is dismissed.

[V.L.ACHLIYA]
JUDGE

KNP.