

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5930 OF 2015
ALONG WITH
WRIT PETITION (ST.) NO. 24514 OF 2018***

Dnyanoba Eknath Gunjekar & Ors. ... Petitioners

Vs

Arun Machhindra Ghadage & Anr. ... Respondents

Mr. Vishwanath Suresh Talkate, Advocate for Petitioners in both petitions.

Mr. Shankar Maruti Katkar, Advocate for Respondents in both petitions.

CORAM : SANDEEP K. SHINDE J.

DATE : June 26th, 2019

P.C. :

1. Heard learned counsel for parties.
2. The suit instituted by respondents no. 1 and 2 (plaintiffs) in Regular Civil Suit No. 385 of 2011 was decreed by the Trial Court on 30.11.2013 and restrained the defendants no. 1 to 4 from causing damage or destroy the TAL situated on northern boundary of suit property. Against this decree, Regular Civil Appeal No. 9 of 2014 was preferred by the defendants. Pending

appeal, they applied and requested the Appellate Court to suspend the decree of injunction passed in Regular Civil Suit No. 385 of 2011. The Appellate Court declined the relief on 20.10.2014. Aggrieved by this order, Writ Petition No. 5930 of 2015 has been preferred. In the meantime, the respondents/decree holders instituted Regular Darkhast No. 15 of 2014. This Court on 02.07.2015 issued notice to respondents (plaintiffs) and stayed the proceedings in Regular Darkhast No. 15 of 2014.

3. Pending Writ Petition 5930 of 2015, Regular Civil Appeal No. 09 of 2014 filed by the petitioners came to be dismissed for default on 07.04.2017. The petitioners/ Appellants in the Civil Appeal applied for its restoration and since the delay of 60 days occurred in preferring the application for restoration, they sought its' condonation vide Civil Miscellaneous Application No. 113 of 2017. The Appellate Court rejected the said application and refused to condone the delay vide order dated 19.06.2018. Against this order, Writ Petition (St.) No. 24514 of 2018 was preferred.

4. Since Regular Civil Appeal No. 09 of 2014 has been dismissed for default on 07.04.2017, Writ Petition No. 5930 of 2015 is rendered infructuous and therefore dismissed accordingly.

5. In Writ Petition No. 24514 of 2018, petitioners have challenged the order dated 19.06.2018 whereby Learned District Judge refused to condone 60 days delay caused in preferring the application for restoration of the Civil Appeal No. 09 of 2014.

6. In my view, sufficient cause has been shown to condone sixty days delay and accordingly Miscellaneous Civil Application No. 113 of 2017 filed in the Court of District Judge-3 at Pandharpur is allowed, subject to cost Rs. 10,000/- (Rs. Ten Thousand). Petitioners shall pay the cost to the respondents (plaintiffs) within three weeks from today. Writ Petition No. 24514 of 2018 is allowed in terms of prayer clause 'a', subject to cost. Learned Appellate Court shall decide the application preferred by the petitioner for restoration of Appeal No. 09 of

2014, after it is registered and numbered, as expeditiously as possible. In case the petitioners/ appellants prefer an application for any interim relief during the pendency of the appeal, the same shall be decided on its own merits.

7. Writ Petition No. 24514 of 2018 is allowed in aforesaid terms. Both the petitions are disposed of accordingly.

(SANDEEP K. SHINDE, J.)