

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (CAS) 963 OF 2018

IN

SECOND APPEAL STAMP 11037 OF 2018

(Shankar s/o. Babulal Thakur (dead) thr LRs Ganesh s/o. Shankar Thakur & ors..vs..
Western Coalfields Ltd thr its General Manager)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri A.N. Ansari, counsel for appellants.
Shri K. Munde h/f Shri A.M. Ghare, counsel for respondent.

CORAM: ROHIT B. DEO, J.

DATE: 18th MARCH, 2019.

This application is taken out for condonation of
delay of 1476 days in preferring the appeal.

2 Admittedly, the First Appeal is dismissed by
judgment and decree dated 18.1.2014.

3 The civil suit is dismissed on 7.4.2005. The
justification pleaded is that another suit - Regular Civil Suit
20 of 2003 instituted by Smt. Kusum Shankar Thakur – the
appellant 1(C) seeking a declaration that she is the legal
owner of survey 11 admeasuring 1.26 H.R. situated at

village Kawadi, Tah. Bhadrawati, District Chandrapur and a declaration that since the said land was acquired by Western Coalfields Limited (WCL), her son Pawan Shankar Thakur is entitled for employment, was pending. The suit filed by Smt. Kusum Thakur was dismissed on 19.4.2006. She preferred Appeal 214 of 2008 before the District Judge-2, Warora which is pending for adjudication. During the pendency of Regular Civil Appeal 214 of 2008, an application under Order 41 Rule 27 of the Code of Civil Procedure for permission to file documents, was filed by Kusum Thakur which was allowed. The application seeking amendment of pleadings was then filed by Kusum Thakur which was rejected by the appellate Court. Smt. Kusum Thakur challenged the said order in Writ Petition 7285 of 2017 and this Court issued notice by order dated 15.11.2017. It is then stated that it was only on 17.1.2018 when the counsel who is representing Smt. Kusum Thakur before this Court in Writ Petition 7285 of 2017 was scrutinizing the brief that the counsel came across a reference to the suit filed by the husband of Kusum Thakur. It is then stated that the counsel appearing for Smt. Kusum

Thakur in the High Court called the applicant 1-C to discuss the issue and during the interaction, the counsel asked the applicant 1-C to ascertain the status of the appeal. It is then stated that it was only in February 2018 that the applicant-1-C came to know that Regular Civil Appeal 154 of 2008 challenging the judgment and order dated 7.4.2005 in Regular Civil Suit 56 of 2003, is already dismissed.

4 It is difficult to believe the justification pleaded in support of the application for condonation of delay. This Court, however, thought it appropriate to look into the merits of the Second Appeal only to satisfy the conscious of the Court on the merits or otherwise of the claim of the plaintiff for appointment in lieu of acquisition of land.

5 Both the Courts below have concurrently held that the plaintiff did not prove the ownership of agricultural land survey 11 situated at village Kawadi. Be it noted, it was the case of the plaintiff that the said land was acquired by WCL and that in view of the policy of WCL, the nominee of the plaintiff Shri Shankar Thakur is entitled to

employment. Both the Courts have further held that the plaintiff did not produce on record any material in the nature of statutory or binding policy which would entitle him to nominate his son or any other person for employment. Perusal of the suit claim would reveal that the plaintiff contends that in view of the policy of the Central Government and the State Government, it is the duty of the acquiring body to give employment to the person whose land is acquired or to the nominate of such person. It is not disputed that no policy is placed on record on the basis of which the Courts below could have examined the claim. Even if it is assumed *arguendo*, that there are executive instructions or any non-statutory policy whether the civil Court could have granted the relief sought is extremely doubtful. Be that as it may, this question does not arise for consideration since no material is placed on record to substantiate the claim that as a matter of policy, the acquiring body ought to have appointed the son of the plaintiff.

the case of Western Coalfields Limited ..vs.. Jaidev Murlidhar Vidhate & Ors, reported in 2018(4)Mh. L.J.697 is misconceived. This Court was considering the enforceability of an agreement executed by the acquiring body with the land owner whose land was acquired. In the factual matrix, this Court held that the agreement can be specifically enforced. Concededly, there is no agreement executed by the acquiring body in favour of the plaintiff.

7 Since, even on merits, this Court is not satisfied that there is any infirmity in the view concurrently taken by the Courts below, and the delay of 1476 days is not satisfactory explained, the Civil Application for condonation of delay is rejected.

JUDGE