

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**CIVIL APPLICATION NO.7402 OF 2019
IN SAST/22551/2018**

RAMBHAU BHAGA BHALE AN OTHERS
VERSUS
SUMANBAI RAMBHAU ABHALE AND OTHERS

.....

Advocate for Applicants : Mr. A. N. Nagargoje
Advocate for Respondents No.1 to 3 : Mr. V. Y. Bhide
AGP for Respondents No.4 and 5 : Mr. A. M. Phule

.....

WITH

**CIVIL APPLICATION NO.1010 OF 2021
IN SAST/25275/2020**

SUMANBAI RAMBHAU ABAHEL AND OTHERS
VERSUS
RAMBHAU BAHGA ABHALE AND OTHERS

.....

Advocate for Applicants : Mr. V. Y. Bhide
Advocate for Respondents No.1 to 3 : Mr. A. N. Nagargoje
AGP for Respondents No.4 and 5 : Mr. A. M. Phule

.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
27-07-2021**

**Date of Pronouncing The Order :
10-08-2021**

ORDER :

1. Both the applications are between the same parties and the properties involved are also almost the same. The First Appellate Court has decided both the matters on the same day and, therefore, the applications for condonation of delay are considered together.

2. Heard learned Advocate A. N. Nagargoje, learned Advocate Mr. V. Y. Bhide and learned AGP Mr. A. M. Phule appearing for respective parties. In order to cut short, it is stated that both of them have made submissions in support of their respective contentions.

3. The applicants in Civil Application No.7402 of 2019 are the original defendants No.3 to 5. Respondents No.1 to 3 in that application are the original plaintiffs who had filed Special Civil Suit No.44 of 2004 before learned Civil Judge, Senior Division, Sangamner, District Ahmednagar. The suit was decreed which was for recovery of amount of their 3/4th share which was the compensation amount in respect of the property acquired by defendants No.1 and 2 for construction of Nilwande Dam and for restraining defendants No.3 to 5 therein from withdrawing the amount of compensation. The said Judgment and decree was

challenged by the present appellants by filing Regular Civil Appeal No.56 of 2012 (then old First Appeal No.1124 of 2006) before learned Adhoc District Judge-1, Sangamner. The appeal came to be dismissed on 27-03-2018. Those appellants want to challenge the said Judgment and decree in the second appeal, however, there is a delay of 19 days. Though the learned Advocate appearing for respondents No.1 to 3 strongly opposes, yet taking into consideration the duration of the delay and reasons mentioned, the delay stands condoned.

4. In Civil Application No.1010 of 2021, the applicants are plaintiffs No.1 to 3 in said Special Civil Suit No.44 of 2004 and respondents No.3 to 5 are the applicants in Civil Application No.7402 of 2019 whose delay condonation application for condoning the delay of 19 days has been allowed in the above said paragraph. Now for the applicants in this Civil Application No.1010 of 2021 there is a delay of 609 days in preferring the second appeal as per their contention. They want to challenge the same decree to the extent it has gone against them. It has been contended that in determining the share and distribution amongst the plaintiffs and the eligible defendants, the compensation amount awarded to the joint family is

only considered. Plaintiff No.1 who is the mother, her share has not been considered, who is also having equal share to the sons and husband and, therefore, to that extent they want to challenge, but then it has been contended that due to the misunderstanding and wrong advise, leading to the confusion in understanding the decision in Regular Civil Appeal No.56 of 2012 and one more Regular Civil Appeal No.10 of 2004 which was also for the partition between the same parties, they had not preferred the second appeal. But when they realize the conflicting Judgments in those appeals which were decided by the same Judge on the same day, they instructed their Advocate to file a second appeal. However, due to the COVID-19 pandemic situation, they could not approach.

5. The application has been resisted by respondents No.1 to 3 herein and it is stated that the appeal was decided on 27-03-2018 when there was no pandemic situation. The pandemic situation has started from the month of March 2020 and the applicants cannot take advantage of the decisions of extension of limitation by Hon'ble Apex Court in SUO MOTO WRIT (CIVIL) NO.3 of 2020 because the limitation for preferring appeal had much earlier expired for the applicants.

6. Learned Advocate for the applicants has tried to give as to how the confusion was created. It was stated that the Special Civil Suit No.44 of 2004 was decided by Civil Judge, Senior Division, Sangamner on 22-09-2006. That decree was challenged in Regular Civil Appeal No.56 of 2012 (old First Appeal No.1124 of 2006). That appeal was decided on 27-03-2018 and in that decision plaintiffs No.2 and 3 as well as defendant No.3 were held to be entitled to get 1/3rd share each equal to Rs.1,15,000/- and it was decided that plaintiff No.1 would get 1/12th share to the extent of Rs.9580/- from the amount which would be received by defendant No.3. The property involved in that suit was the compensation amount deposited by the Government in view of the acquisition of ancestral agricultural lands. However, as regards the second litigation is concerned, it was Regular Civil Suit No.242 of 1989 which was decided by learned Civil Judge, Junior Division, Akole on 27-04-2001. Regular Civil Appeal No.10 of 2004 was preferred, it was decided on 27-03-2018 by learned Adhoc District Judge-1, Sangamner. It was decided in that suit that plaintiffs and defendants are having 1/7th share in each suit property, however in appeal, it was modified and it was stated that plaintiffs No.1 to 3 and defendants No.1, 3 and 4 have 1/6th share each. Some of the parties are different in that suit,

however that suit was for partition of the ancestral agricultural land as well as house property. The fact that was required to be noted is that the plaintiffs were the same in both the matters but their shares were differently carved out and, therefore, it had led confusion.

7. There appears to be some confusion in the mind of the applicants and that can be taken as good ground, however applicants cannot take advantage of the order of the Hon'ble Apex Court in recognizance of extension of limitation passed in SUO MOTO WRIT (CIVIL) NO. 3 of 2020, as in the present case both the Judgments in both matters were delivered by the learned Adhoc District Judge, Sangamner on 27-03-2018 and at that time there was no pandemic situation. When the limitation period had already began and also ended, there was no question of granting any extension of period of limitation due to the peculiar circumstances. The delay that would come to 888 days, still taking into consideration the said confusion and since the vital rights of the parties are involved and taking into consideration the fact that the delay caused in another application has been condoned, it may further lead to different decisions, it is necessary that all the disputes should be resolved before this Court. The inconvenience that is caused to respondents No.1 to 3 as well as to the State due to this

delay, it deserves to be compensated in terms of money. Hence, the said application also deserves to be allowed, however with cost. Hence, following order.

ORDER

- (1) Civil Application No.7402 of 2019 stands allowed.
- (2) The delay of 19 days caused in filing second appeal stands condoned.
- (3) Registry to verify and register the second appeal.
- (4) Civil Application No.1010 of 2021 also stands allowed.
- (5) The delay of 888 days in filing second appeal stands condoned subject to deposit of cost of Rs.25,000/- (twenty-five thousand) within a period of one (01) month from today.
- (6) After the amount is deposited, Registry to verify and register the second appeal.
- (7) Respondents No.1 to 3 are allowed to withdraw amount of Rs.5000/- each (five thousand). Rest of the amount be credited to Government.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

GAWADE
VIRENDRA J

Digitally
signed by
GAWADE
VIRENDRA J
Date:
2021.08.11
10:02:49
+0530