

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

**CIVIL APPLICATION NO.9740 OF 2019
WITH
REVIEW APPLICATION STAMP NO.13586 OF 2019
IN
WRIT PETITION NO.5329 OF 1995**

Shri. Nandalal Dhondu Patil and Others
Versus
Late Nandalal Waghmal Kukareja Through LRs

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Advocate for the Applicants : Mr. M. M. Bhokarikar
AGP for Respondents/State : Mr. S. W. Munde
Advocate for Petitioner in WP : Mr. G. V. Wani
Advocate for Respondent No.2: Mr. D. S. Joshi

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 20th JULY, 2022

ORDER :

1. This application is filed seeking condonation of delay of 416 days in filing the review application, thereby seeking review of the order passed by this Court on 18-01-2018. In the said order, this Court allowed the writ petition filed by the respondent no.1 in terms of prayer clause '(b)' of the writ petition, which reads thus;

"(b) Set aside and quash the Judgment and order passed in Revision No. Ten.A 147 of 1994 on July, 28, 1995 by the learned Member of the Maharashtra Revenue Tribunal at Bombay by allowing the petition and also by quashing the Judgment and order passed by Tahsildar and A.L.T. Erandol in Tenancy Case No.6 of 1986, on September, 24, 1994."

2. Admittedly, the applicants were not party to the writ petition. Their father/respondent no.2 in the present application, who is the judgment debtor, was respondent no.1 in the writ petition. The ground raised in the present application seeking condonation of delay is that the applicants were not aware of the order passed in the writ petition and after getting knowledge, they have immediately preferred a review application. According to the applicants, their rights are involved in the suit property and therefore, they are required to be heard and their review application needs to be considered on merit. According to the applicants, there is an error apparent on the face of record, while passing the order under review. In support of application seeking condonation of delay, the learned Advocate for the applicants has placed reliance on **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy** reported in **2013 AIR SCW 6158**, **Arshnoor Singh Vs. Harpal Kaur** reported in **AIR 2019 SC 3098**, **S. Nagaraj Vs. State of Karnataka** in **Contempt Petition No.55/1992** decided on 26.08.1993, **Ganpatbhai Mahijibhai Solanki Vs. State of Gujrat** reported in **AIR 2009 SC (Supp) 986**, **Kamlesh Verma Vs. Mayavati** reported in **2013 AIR SCW 4944**, **Board of Control for Cricket India Vs. Netaji Cricket Club** reported in **AIR 2005 SC 592**, **Shapoorji Data Processing Ltd. Vs. Ammer Trading**

Corporation Ltd. reported in **AIR 2003 Bom. 228** and **Sir Hari Sankar Pal Vs. Anath Nath Mittar** reported in **AIR 1949 FC 106.**

3. The learned Advocate for the respondents has opposed the application for condonation of delay, contending that the decree passed against the father of applicants in the year 1994, which is sought to be executed and the same is not executed till this date, at the instance of respondent no.2 and the present applicants. He submits that the applicants were not party to the writ petition and therefore, they are not entitled to challenge the order passed in writ petition.

4. Perusal of the record indicates that the applicants were not party to the writ petition and their father/respondent no.2 has contested the matter. The decree is passed against respondent no.2, which is sought to be executed by the respondent no.1.

5. If the applicants were not party to the proceedings before the Maharashtra Revenue Tribunal as well as the proceedings of the writ petition, they are not entitled to question the legality and validity of the order passed in writ petition.

6. Apart from the above, no plausible explanation and/or reason is given for condonation of delay. It is not possible to accept that

when the father/respondent no.2 was prosecuting the proceedings all along, the applicants were not aware of the said proceedings and the decision given in the writ petition. No case is made out by the applicants for condonation of delay.

7. There cannot be any dispute about the principles laid down in ratio of the Apex Court in the above referred judgments that the delay should be liberally condoned. However, in the peculiar facts of the present case and particularly, considering the aspect that the applicants were not party to the proceedings. This Court is of the considered view that the applicants have failed to make out any ground for review and no sufficient ground is given for delay condonation. The application is, therefore, dismissed.

[NITIN B. SURYAWANSHI, J.]

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