

BDP-SPS-TAC

BHARAT
DASHARATH
PANDITDigitally signed
by BHARAT
DASHARATH
PANDIT
Date: 2022.02.23
12:56:26 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1798 OF 2022**

Shri Deepak Sudam LokhandePetitioner
V/s
Shri Sanjay Mahadev Lokhande and OrsRespondents

Mr. Prabhanjan Gujar for the Petitioner.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 23, 2022

PC.:-

1] After having heard Mr. Gujar, learned Counsel for the Petitioner – original judgment debtor in decree for partition, what can be noticed is, cross-objection preferred under Rule 22 of Order 41 is at belated stage i.e. almost after the period of more than five years. Application for condonation of delay does not speak of any specific reason so as to establish bonafides of the Petitioner. Apart from above, it can be noticed that the cross objection preferred is not in tune with the provisions of Order 1 Rule 41 as contemplated under Rule 22 of the said Order.

2] In the aforesaid backdrop, Mr. Gujar, learned Counsel for the

Petitioner would make motion for withdrawal of the present Petition.

3] Petition stands disposed of as withdrawn with following directions.

4] Petitioner is permitted to withdraw the cross-objection in the form of cross appeal preferred under Order 41 Rule 22 with the application for condonation of delay. Petitioner shall be at liberty to take out fresh proceedings under Order 41 Rule 22 read with Rule 1 coupled with the application for condonation of delay which shall be decided independently without being influenced by disposal of the present Petition.

5] Trial Court while dealing with the said proceedings shall be sensitive to the fact that the Court has sufficient power to condone the delay caused in preferring cross objection. The Court must have regard to law laid down by the Apex Court in the case of *Mahadev Govind Gharge and Others vs. Special Land Acquisition Officer* reported in (2011) 6 SCC 321, particularly paras 39 and 40.

6] Needless to clarify that time spent in pursuing the cross objection and present Petition be considered at the time of dealing with the issue of limitation.

(NITIN W. SAMBRE, J.)