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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION 2043 OF 2023

IN

REVIEW PETITION(ST) NO.19156 OF 2022

IN

WRIT PETITION NO. 399 OF 2012

Shirish Bhaskar Sathaye

...Applicant

V/s.

The Nashik Municipal Corporation & Anr.

...Respondents

Mr. Nitin D. Vhatkar for the Applicant.

Mr. Vaibhav Patankar for Respondent No. 1.

**CORAM : A.S. GADKARI &
SHARMILA U. DESHMUKH, JJ.**

DATE : 25th September, 2023.

P. C. :

1. Heard Mr. Mr. Nitin D. Vhatkar, learned counsel appearing for the Applicant and Mr. Vaibhav Patankar, learned counsel appearing for Respondent No. 1.
2. This Interim Application has been filed seeking condonation of delay of 35 days in filing the Review Petition.
3. The Review Petition(St)No. 19156 of 2022 seeks review of the Order dated 1st December, 2014 passed in Writ Petition No. 399 of 2012.
4. The Review Petition has been filed on 2nd August 2022 and as

such there is a delay of about 7 years and 214 days in filing the Review Petition. Despite the said position, in the Interim Application, the prayer is for condonation of delay of 35 days.

5. Upon query by this Court as regards the incorrect number of days of delay being mentioned in the Interim Application, Mr. Nitin Vhatkar, learned counsel appearing for the Applicant submits that pursuant to the Order dated 1st December, 2014 passed in Writ Petition No. 399 of 2012, the matter was placed for compliance on 5th March, 2015 and disposed of by accepting the statement made in the compliance Affidavit filed by Respondent No. 1. He would submit that, on 17th March, 2015 inadvertently Writ Petition No. 3086 of 2015 inter alia praying for handing over the peaceful and vacant possession of entire final plot No. 105B by removing encroachment thereon was filed. He would further submit that, the said Petition was dismissed by this Court on 17th December, 2021 and the Order was uploaded on 31st May 2022 and as such, the delay has been calculated by taking the date of 17th December, 2021 as the date of commencement of the period of limitation.

6. We fail to comprehend as to how the limitation can be said to commence from 17th December, 2021 which is the date of passing of

order in Writ Petition No. 3086 of 2015, when the Review Petition seeks review of the Order dated 1st December, 2014. Mr. Vhatkar submits that the Applicant is entitled to seek benefit of Section 14 of Limitation Act. He would rely upon the decision of the Apex Court in the case of *M/s. Laxmi Srinivasa R and P Boiled Rice Mill vs. The State of Andra Pradesh & Anr.*, [2022 LiveLaw (SC) 964]. It needs to be noted that, in the Interim Application, there is no prayer seeking exclusion of time under the provisions of Section 14 of the Limitation Act, 1963 and without specific relief in that behalf being sought, the Petitioner cannot orally plead exclusion of time. Even if, that be so, it was necessary for the Applicant to set out the correct number of days delay in the prayer clause and thereafter seek benefit of Section 14 of Limitation Act, 1963.

7. Mr. Vaibhav Patankar, learned counsel appearing for Respondent No.1 submits that, as against the Order dated 1st December, 2014 passed in Writ Petition No. 399 of 2012, the present review Applicant had preferred a Special Leave Petition before the Apex Court which came to be dismissed vide Order dated 7th November, 2022. He would further point out that, the Special Leave petition was dismissed on the ground of delay as well as on merits.

8. Vide Order dated 7th November, 2022 the Apex Court in

Special Leave Petition (Civil) Diary No(s). 30824 of 2022 dismissed the Special Leave Petition on the ground of delay as well as on merits. The Applicant seeks review of the Order which has already been upheld by the Apex Court on merits. It appears to us that the fact of pendency of the Review Petition was not pointed out to the Apex Court. It also needs to be noted that, the order of dismissal by the Apex Court was not pointed out to this Court by the learned counsel for the Applicant. It was expected that this fact will be pointed out at the inception of the hearing and such conduct of the Applicant needs to be deprecated.

9. Apart from the fact that, the application seeking condonation of delay is lacking in necessary particulars and necessary reliefs, considering that the Order under review has already been upheld by the Apex Court on merits, we find no reason to condone the delay of 7 years and 214 days caused in preferring the Review Petition. No sufficient cause least to say any plausible explanation to condone such a colossal and inordinate delay, at all is offered by the Applicant in the pleadings.

10. Interim Application for condonation of delay is dismissed.

11. In view of dismissal of delay Application, Review Petition is also dismissed.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)