

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION (ST) No.30002 OF 2023
IN
REVIEW PETITION NO.3 OF 2023**

Ashok Ganu Shelke ... Applicant

IN THE MATTER OF

Ashok Ganu Shelke Appellants

V/s.

Suresh Ganu Shelke and Ors ... Respondents

Mr. Atul Damle Senior Counsel i/b Ashoka Law Firm, for the Applicant.

Mr. Prasad Dhakephalkar Senior Counsel i/b Mr. B. Shinde, Advocate for Respondent No.1 & Interim Application (ST) No.32674 of 2023, for the Applicant.

CORAM : RAJESH S. PATIL, J.

DATED : 6 DECEMBER 2023

P.C.:

1. By an order dated 30 August 2019, this Court after hearing Second Appeal No.756 of 2016 disposed of the Second Appeal. The said Second Appeal was filed by Suresh Ganu Shelke, who admittedly was Defendant No.3 in the suit. Mr. Damle who is appearing for Original Plaintiff (Ashok Ganu Shelke), inform this Court that on 30 August, 2019 when the Second Appeal was heard his client the Original Plaintiff (Ashok Ganu Shelke) was never served, therefore, nobody appeared on behalf of Original Plaintiff.

2. However it appears that while passing the order dated 30 August, 2019 the Appellant who was Original Defendant No.3 was addressed as Original Plaintiff. The said order dated 30 August, 2019 passed in Second Appeal No.756 of 2016, read as under:-

“ By this second appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellant (original plaintiff) has impugned the part of the judgment and decree dated 21st March, 2016 passed by the learned District Judge-3, Raigad – Alibag insofar as the directions issued in paragraph (5) of the operative part of the order i.e. the plaintiff and the defendant nos. 2 to 5 are entitled for regularization of house property for village Asudgaon, admeasuring 500 sq.meter on the basis of reserved price of Board resolution nos. 9046 and 5622 and not allowing the entitlement for an area of 1175 sq.mtrs. which was allegedly encroached upon by the plaintiff is concerned.

2. During the course of the arguments of the second appeal before this court on the last date, it was urged by Mr.Sharma, learned counsel for the respondent no.1 that the claim for regularization of the unauthorized portion of the suit land was already rejected by this court by an order dated 27th April, 2006 in Writ Petition No.2747 of 2005 filed by Mr.Ashok Ganu Shelke against State of Maharashtra & Ors. The matter was adjourned to enable the parties to produce a copy of the said order for perusal of this court.

3. A perusal of the order dated 27th April, 2006 passed by this court in Writ Petition No.2747 of 2005 indicates that the issue of encroachment insofar as the suit property which is subject matter of this second appeal was not the subject matter of the said Writ Petition No.2747 of 2005. I am thus not inclined to accept the submission of Mr.Sharma, learned counsel for the respondent no.1 that the issue of encroachment has

been already rejected by this court in the said Writ Petition No.2747 of 2005.

4. Since, the impugned judgment and decree passed by the first appellate court is mainly based on the premise that the issue of regularization was already rejected in the Writ Petition No.2747 of 2005 which is erroneous premise, after hearing the learned counsel for both the parties and in view of the limited challenge insofar as the plot for which an application for regularization was made, I pass the following order :-

(a) The application made for regularization by the appellant (original plaintiff) for the balance area i.e.675 sq.mtrs is restored to file.

(b) The respondent no.1 is directed to consider the said application for regularization for 675 sq.mtrs. made by the appellant on its own merits and in accordance with the prevailing policies and resolutions passed by the respondent no.1. The application shall be decided within eight weeks from today.

(c) It is made clear that if the said application is already disposed of, the appellant would be at liberty to file a fresh application for regularization in respect of the said area of 675 sq.mtrs.

(d) If any such application is made, the same shall be decided on its own merit and in accordance with the policy in force when the original application for regularization was made.

(e) The rest of the portion of the judgment and decree dated 21st March, 2016 passed by the learned District Judge – 2 is not modified by this order.

(f) Second appeal is disposed of on the aforesaid terms. There shall be no order as to costs.”

3. After the passing of the said order dated 30 August, 2019 Original Plaintiff (Ashok Ganu Shelke) filed a Review Petition challenging the order dated 30 August, 2019 viz Review Petition No.3 of 2023. While the Review Petition was taken up for hearing on 10 October 2023, this Court by its order on the request of Advocate for the Review Petitioner granted liberty to file a delay condonation application.

4. Pursuant to the directions passed by this Court on 10 October, 2023, Interim Application (Stamp) No.30002 of 2023, seeking condonation of delay in filing the Review Petition was filed by Ashok Ganu Shelke (Original Plaintiff). The said Interim Application for delay condonation was taken up for hearing on 1 November, 2023.

5. The order passed on 1 November, 2023 in the delay condonation application reads as under:-

1. “By this application, the Applicant has sought to condone the delay of 25 days in filing the review petition. Learned counsel for the Respondents has no objection.

2. In view of the said statement and for the reasons stated in the application, the delay is condoned. The Review Petition be registered after

removing office objections, if any.

3. Application stands disposed of.

4. The Review Petition be listed on 06/11/2023.”

6. Therefore the Court was of the view that the delay was of 25 days in filing the Review Petition, as mentioned in the delay condonation Application. It is also pertinent to note that on that day on behalf of Defendant No.3 (Suresh Ganu Shelke) Advocate appeared. It appears that as mention today infact the delay was not 25 days but the delay was almost for four years which was not pointed out to the Court on that day. On the basis of such submission and averment made this Court has passed an order on 1 November, 2023 condoning the delay.

7. The present Interim Application viz Interim Application (Stamp) No.32674 of 2023 is filed by Original Defendant No.3 Suraj Ganu Shelke with a prayer that the order condoning the delay in filing the Review Petition be recalled and the Interim Application for condonation of delay be restored to file and be heard and disposed of in accordance with law.

8. I have heard the counsel for both the side. Its a matter on record that when the delay condonation application was heard the counsel for Original Defendant No.3 was present in the Court and he was before that day duly served with the copy of Review Petition along with delay application. Today it is nobody case that a reply was filed opposing the delay condonation application. On the basis of the documents available on record and the submission

which were made before the Court the delay was condoned on 1 November, 2023.

9. Therefore the submission of learned Senior Counsel that there is case of suppression and misrepresentation by Plaintiff will not be a good submission for the reasons that the Defendant No.3 was represented on that day by a counsel, no such objection were made on behalf of Defendant No.3. The fact remains on record that when Second Appeal was disposed of nobody appeared for Original Plaintiff on that day. It is the case of the Plaintiff today before me that infact they were never served with the copy of the Second Appeal before 30 August 2019.

10. Therefore taking into consideration all these fact as mentioned above the Interim Application (ST) No.32674 of 2023 filed by the Defendant No.3 for recalling the order is hereby allowed. So also the Original Plaintiff are allowed to amend the Interim Application (ST) No.3002 of 2023 filed by them as far as the number of days of delay in filing the Review Petition is concerned. Amendment to be carried out forth with.

11. The delay is of four years in filing the Review Petition. Out of that four years it is matter on record that there was a pandemic period of roughly around two years. Even though the Original Plaintiff along with Defendant No.3 has together made an application for regularization of their structures. It is in pertinent to note that this matter is pertaining of village Asudgao, Taluka Panvel, District Raigad. The application for regularization was made by Original Plaintiff who had signed it. It is submission of

Mr. Damle that the Plaintiff has barely studied till 10th Standard in vernacular medium. Taking into consideration all these fact I am satisfied that a ground is made to condone the delay in filing the Review Petition. According to me, Interim Application requires to be allowed and the Review Petition requires to be heard on merits. The Interim Application (ST) No.30002 of 2023 is allowed in terms of prayer clause (a).

**REVIEW PETITION NO.3 OF 2023
WITH
INTERIM APPLICATION (ST) NO.32674 OF 2023**

Suresh Ganu Shelke	... Appellant
<u>IN THE MATTER OF</u>	
Ashok Ganu Shelke	Applicant
V/s.	
Suresh Ganu Shelke and Ors	... Respondents

1. The Original Defendant No.3 are permitted to file their reply to the Review Petition granted a time of three days to file their reply to the Review Petition and serve a copy of the same on the Original Plaintiff Advocate.

2. Learned Senior Counsel Mr. Damle submits that the CIDCO has been served in the present proceeding and they were aware that the matter is taken up today for hearing. Nobody appears for CIDCO today when the matter is called out. Taking into consideration the facts of this matter, CIDCO is thereby injuncted from taking any coercive step towards the suit structure till the hearing and disposal of the Review Petition.

3. Review Petition to come up for hearing on 13 December, 2023. The Original Plaintiff is permitted to file re-joinder before the next date of the hearing.

(RAJESH S. PATIL, J.)