

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CAF No.1626/2023 in FIRST APPEAL NO.185/2017

(Smt. Sushila wd/o Madanrao Jumale Vs. State of Maharashtra and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. Pallavi Mahashabde, Advocate for the appellant.
Ms. T.H. Udeshi, AGP for respondent nos.1 and 2.
Mr. Parth Sagdeo, Adv. h/f Mr. M.M.Agnihotri, Advocate for respondent
no.3.

CORAM : SMT. M.S. JAWALKAR, J.

DATED : 27-07-2023

1. Present application is filed for extension of time to file application under Section 5 of the Limitation Act, 1963 (for short "the Act of 1963"). It appears that the appellant has challenged the order passed by the Reference Court rejecting the reference on the ground that it is barred by limitation and the application under Section 5 of the Limitation Act, praying for condonation of delay was not filed. As held in **Bhupal Premchand Shah and others Vs. State of Maharashtra** reported in **AIR 1994 Bom, 317**, provisions of Section 5 of the Act of 1963 are applicable to the application under Section 18 (1) of the Land Acquisition Act, 1894. In view of that, the impugned order was set aside by this Court vide order dated 20.8.2018 and proceeding was restored on the file of District Judge-2, Amravati. The appellant was granted liberty to file application under Section 5 of the Act of 1963 and three months time was granted to file such application. Learned District Judge was directed to

decide the same in accordance with law. It appears that this order came to be passed when none was representing the appellant.

2. It is submitted by learned counsel for the applicant that learned Advocate D.M. Upadyay was representing and appearing in the matter on behalf of the appellant. When the applicant made enquiry, learned Advocate told the applicant that the matter is allowed but, no interest was granted in First Appeal. Review application is filed. Being a laywomen, the applicant did not understand whether review application was filed or not. Then in 2019, Advocate D.M. Upadyay was elevated as Family Court Judge. At that time, it was informed to the applicant by Advocate Upadyay that he had handed over the matter to one advocate but, that information was not correct. Therefore, he could not contact Advocate Upadyay. The same answer is given by his counsel. Ultimately, she has engaged another counsel and obtained certified copy of the order. After inquiring she came to know that there is no review pending and limit of three months is also expired.

3. In view thereof, present application is filed for extension of time of two months to file application under Section 5 of the Limitation Act.

4. Learned counsel for the respondents have vehemently opposed the application. However,

considering the reasons mentioned in the application, it would be appropriate to restore the present reference which was disposed by the District Judge-2, Amravati, so that opportunity will be granted to the applicant. It appears apparently that as per Advocate Shri Upadyay nominated as Judge, Family Court, she was without any information about the matter. As such, application needs to be allowed. Accordingly, I proceed to pass the following order:

ORDER

- (i) Application is allowed.
- (ii) Two months time is granted to file application under Section 5 of the Limitation Act before the learned Reference Court.
- (iii) The Reference Court is hereby directed to decide the application on its own merits.
- (iv) Application stands disposed of.

JUDGE

ambulkar

Signed By: MUKUND
LAXMANRAO AMBULKAR
Private Secretary

Signing Date: 31.07.2023 14:21