



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 56 OF 2024

1. Baswanappa S/o. Limbanappa Patankar (deceased)
2. Sow. Sarojini W/o. Baswanappa Patankar (deceased)

Through his LR's (1 and 2)

- 1-1. Kamlesh S/o. Baswanappa Patankar,
Age : 51 years, Occ. : Business,
- 1-2. Mangesh S/o. Baswanappa Patankar,
Age : 47 years, Occ. : Business,

Both R/o. : Plot No.B-1, MIDC Corner,
Latur, Tq. and Dist. Latur

... PETITIONERS

VERSUS

1. Ramkisan S/o. Shankarrao Madne,
Age : 65 years, Occ. : Agriculture,
R/o. : Sul Galli, Latur, Tq. & Dist. Latur
- ... RESPONDENT**

...
Mr. J.R. Shah – Advocate for Petitioners

....
CORAM : SANDIPKUMAR C. MORE, J.
DATE : 12th April, 2024

ORDER :

1. The petitioners who are the original respondents in Civil Miscellaneous Application No.6 of 2020 have challenged the order dated 31.01.2024 passed by the learned Civil Judge Senior Division, Latur i.e. learned Trial Court, below Exhibit – 27 in this

aforesaid application whereby the request of the petitioners/respondents for rejection of the aforesaid application being barred by limitation, as per Order VII Rule 11 of Civil Procedure Code, has been rejected.

2. Learned Counsel for the petitioners/respondents submits that, present respondent who is the plaintiff in Regular Civil Suit No.60 of 1994 filed the aforesaid Civil Miscellaneous Application No.6 of 2020 for recovery of mesne profits as per the decree in the aforesaid suit dated 03.02.2009 on 19.08.2020 after the requisite period of limitation of three years. Thus, according to learned Counsel for the petitioners/respondents is time barred. Moreover, there is no reference in the application about the exemption from the limitation period due to the pandemic situation of Covid-19. Thus, he submits that failure of claiming such exemption has also resulted into filing such time barred application.

3. Heard learned Counsel for the petitioners/respondents and also perused the documents on record alongwith impugned order at Exhibit – 27.

4. The record shows that, the judgment and decree passed by in

Regular Civil Suit No.60 of 1994 is dated 03.02.2009, however, the said decree was under challenged before the learned District Court, Latur under Regular Civil Appeal No.53 of 2009 and on dismissal of said appeal the petitioners/respondents had preferred the Second Appeal No.176 of 2013 before this Court but it also got dismissed. Thereafter, the respondents had even preferred S.L.P. No.359 of 2013 before the Hon'ble Apex Court, but it was dismissed on 06.10.2017. As such, the decree was under challenged till 06.10.2017. It is also significant to note that, the respondent/applicant had got possession of the suit property in execution proceedings before the learned Trial Court in Regular Darkhast No.4 of 2015 on 17.08.2017 i.e. just before the dismissal of S.L.P. No.359 of 2013 preferred by the present petitioners/respondents.

5. It is to be noted here that, the learned Trial Court has observed that the period of limitation for filing the application for mesne profits in fact started from date of delivery of possession i.e. 17.08.2017 and the decree for mesne profits was primary in nature till then. The learned Trial Court has also observed that, as per the decree enquiry for mesne profits was to be conducted for

specific period which started from 1991 to 17.08.2017 i.e. the date of delivery of possession of the suit property. *Prima-facie* there appears no infirmity in the aforesaid observations of the learned Trial Court. Further, the impugned order also indicates that, the judgments relied upon by the present respondents/petitioners before the learned Trial Court were not applicable because the application for determination of mesne profits is to be filed being a separate application.

6. Further, learned Counsel for the petitioners/respondents tried to argue that the exemption granted by the Hon'ble Apex Court was to be sought in the application itself. Admittedly it was pandemic situation of Covid-19 from 15.03.2020 to 28.02.2022 and considering such situation the Hon'ble Apex Court had stopped the limitation period nationwide, therefore, no force appears in the aforesaid submissions of the learned Counsel for the petitioners/respondents that the present respondent/applicant should have mentioned such exemption in the application itself. Admittedly, in the instant case the period of limitation was to expire for filing application for recovery of mesne profits on 16.08.2020 but in view of the exemption granted by the Hon'ble

Apex Court from 15.03.2020 till 28.02.2022 due to pandemic situation of Covid-19, the instant application filed 19.08.2020 was well withing limitation. In view of the same, present application stands rejected at admission stage.

7. The Civil Revision Application is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE