



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.4570 OF 2024
IN
REVIEW APPLICATION ST. NO.11614 OF 2024
WITH
REVIEW APPLICATION ST. NO.11614 OF 2024
IN
COMMERCIAL APPEAL NO.01 OF 2023**

M/S. Ambarwadikar and Company,
Through its Partner,
Mr. Suryakant V. Ambarwadikar,
Age-53 years, Occu:Business,
Office at "Ambarwadikar Complex",
Surya Lawns, Gat No.103,
Near Datta Mandir, Beed By pass Road,
Deolai, Aurangabad.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through: Secretary,
Water Resources Department,
Having Office at : Mantralaya,
Mumbai-400 032 Maharashtra,
- 2) Executive Engineer,
Minor Irrigation Division No.1,
Having Office at: Sinchan Bhawan,
Jalna Road, Aurangabad,
- 3) Godavari Marathwada Irrigation
Development Corporation,
Through its Executive Director,
Office at: Sinchan Bhawan,
Jalna Road, Aurangabad,

- 4) Executive Engineer,
Godavari Marathwada Irrigation
Development Corporation,
Office at: Sinchan Bhawan,
Jalna Road, Aurangabad,
- 5) Chief Engineer,
Water Resources Department,
Office at: Sinchan Bhawan,
Jalna Road, Aurangabad
- 6) Superintendent Engineer,
Minor Irrigation Division No.1,
Office at: Sinchan Bhawan,
Jalna Road, Aurangabad,
- 7) Assistant Executive Engineer,
Shivna Takali Canal Sub-Division No.2,
Office at: Sinchan Bhawan,
Jalna Road, Aurangabad,
- 8) Assistant Chief Engineer,
Aurangabad Irrigation Department,
Office at: Sinchan Bhawan,
Jalna Road, Aurangabad,
- 9) Superintendent Engineer,
Aurangabad Irrigation Division,
Office at: Sinchan Bhawan,
Jalna Road, Aurangabad,
- 10) Sub-Divisional Engineer,
Shivna Takali Canal II, Aurangabad,
- 11) Sub-Divisional Engineer,
Minor Irrigation Department,
Office at: Sinchan Bhawan,
Kumbhar Pimplegaon, Post Jalna,
- 12) The Branch Manager,
Janata Sahakari Bank Limited Pune,
Opposite Gomtesh Market,
Dalalwadi, Aurangabad 431001.

...RESPONDENTS

...
Mr. R.F. Totla Advocate h/f. Mr. S.V. Lohiya Advocate for
Applicant.
Mr. S.G. Salgare, A.G.P. for Respondent Nos. 1, 2, 5, 6, 7, 8,
9 and 10.

...
**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 3rd MAY, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Civil Application No.4570 of 2024 has been filed for condoning delay of 39 days in preferring Review Application Stamp No.11614 of 2024.
2. Heard learned Advocate Mr. R.F. Totla holding for learned Advocate Mr. S.V. Lohiya for applicant and learned AGP Mr. S.G. Salgare for respondent Nos. 1, 2 and 5 to 10. It is not necessary to issue notice to respondent Nos. 3, 4, 11 and 12.
3. Taking into consideration the duration of the delay, it can be condoned. So also taking into consideration the order to be reviewed and the chronology of events those have been stated, the duration of the delay is not important. Therefore, the delay stands condoned. Civil Application No.4570 of 2024 stands allowed and disposed of.

4. Accordingly, the learned Advocate for the applicant was called upon to make submissions on the Review Application.

5. After giving details of the proceedings, learned Advocate for the applicant submits that this Court while deciding Commercial Appeal No.1 of 2023 on 8th February 2024 had made observations that the Court is accepting the contention on behalf of the respondents, that the contract that was entered into on the basis of tender was determinable, of course, it was on condition. Learned Advocate for the applicant submits that these are the wrong observations. Taking into consideration the subsequent events that though the contempt proceeding was pending before this Court the respondent State went on to publish tender and thereafter the learned Commercial Court had given finding that the defendants i.e. respondents failed to acquire land from the farmers within stipulated period. If that basic condition was not fulfilled which was agitated by the applicant - appellant in the Commercial Appeal also, then those observations were wrong. He also submitted that in Paragraph No.18 of the Judgment prayer clause d) or the Commercial Suit was reproduced, but, in fact the Commercial Appeal was not in respect of the said prayer. Further, there is observation in

Paragraph No.20 of the Judgment that the plaintiff had not come with the clean hands in respect of subletting of the contract. The applicant - review petitioner had not suppressed the said fact and therefore, those observations are also wrong. Though it was observed that the entire land was not made available for the work and the answer can be given in respect of the same only after the full-fledged trial, now the trial Court has given finding to that effect and therefore, taking into consideration the subsequent events, the Review Application deserves to be allowed and a chance needs to be given to the appellant - applicant to support the Commercial Appeal.

6. At the outset, we would like to say that the Review Application is not maintainable in respect of the subsequent events. Commercial Appeal No.1 of 2023 was filed by the original plaintiff to challenge the common order passed below Exhibits 5, 6 and 7 dated 1st November 2023 by Commercial Court / District Court, Aurangabad in Commercial Suit No.1 of 2023, thereby rejecting all the applications. Those applications were for interim relief. There were civil applications along with the said Commercial Appeal. Some of those civil applications were for stay and injunction and two civil applications were for intervention. All those civil applications came to be heard

together and decided by order dated 8th February 2024. Commercial Appeal No.1 of 2023 came to be dismissed and all the civil applications were also dismissed.

7. It will not be out of place to mention here that the said order passed by this Court in Commercial Appeal No.1 of 2023 dated 8th February 2024 was challenged before the Hon'ble Apex Court by filing **Petition for Special Leave to Appeal (C) No. 5018 of 2024**. The Hon'ble Supreme Court declined to exercise its jurisdiction under Article 136 of the Constitution of India, taking into consideration that the order of this Court arises from interlocutory proceedings in the suit. The said order came to be passed on 26th February 2024. We would further like to say that it was clarified by the Hon'ble Supreme Court, that the observations in the impugned order passed by this Court shall not come in the way of the trial of the suit. Then the Special Leave Petition came to be dismissed. Now, when by virtue of the observations of the Hon'ble Supreme Court, the observations made by this Court are not hurdle in the trial of the suit, question of review does not arise. Whatever observations made by this Court were in the interlocutory proceedings and therefore, it can be said that those observations were the prima facie observations.

8. Another fact to be noted is that in spite of the interim orders passed by this Court, still when respondents went ahead or took further steps, the applicant has preferred Contempt Petition No.955 of 2023 and it is pending. Thereafter the applicant had also filed Writ Petition No.2465 of 2024 challenging the action of the respondents for calling the fresh tenders. But the said Writ Petition came to be dismissed on 5th March 2024. Thereafter the applicant approached the learned Commercial Court and filed application at Exhibit 105, as well as applications for amendment to the plaint and addition of parties at Exhibit 116 and 118. Those applications at Exhibit 116 and 118 appears to have been allowed by the said Court. It is then stated that while passing those orders, the Commercial Court has observed that the defendants failed to acquire the land from farmers within stipulated period. It is to be noted that the copy of the said order dated 12th April 2024 passed by the learned Commercial Court has not been annexed. Therefore, it is hard to observe, whether it is an observation taking into consideration the contents in the application or it is a finding. Certainly there is difference between observation and finding. Finding can be arrived at after giving proper opportunity to both the parties to support their contentions and to lead evidence, if necessary. The

applicant also wants to rely on the news published in Daily Newspaper Lokmat dated 12th April 2024 stating that the cheques are issued to the farmers on account of advance compensation and this supports his contention that the defendants failed to acquire the land from the farmers within stipulated period. At the cost of the repetition we would say that this is a subsequent event which was not before this Court when it decided the Commercial Appeal No.1 of 2023 on 8th February 2024.

9. We are, therefore, of the view that there is no error apparent on the face of record in the impugned order which requires interference and the Review Application deserves to be rejected.

10. Review Application, therefore, stands rejected.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE