



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

932 CIVIL APPLICATION NO. 1591 OF 2024
IN RC/1372/2015

ABDUL SALAM ABDUL RAHEMAN DESHMUKH (DIED) THR LRS. BIBI
SAFORA SALAM DESHMUKH AND ORS

VERSUS

THE STATE OF MAHARASHTRA THROUGH S.L.A.O., AURANGABAD
AND ANR

...

Mr. S. K. Adkine, Advocate for Applicants

Mr. D. B. Bhangе, AGP for Respondents

CORAM : Y. G. KHOBRAGADE, J.

DATE : 18th April, 2024

ORDER:

1. Heard Advocate Shri S. K. Adkine, the learned counsel for the applicant and Shri D. B. Bhangе, the learned AGP for the respondents State.

2. By the present application, the applicants prayed for condonation of delay caused in filing application for restoration of appeal, which has been dismissed vide order dated 24.11.2015 passed by the learned Registrar (Judicial) for non removal of office objections.

3. The learned counsel for the appellants/applicants submits that the applicants filed the appeal before this Court under Section 54 of the Land Acquisitions Act. The applicant No.1 died on 07.07.2020 and his wife Bibi Safora w/o Akil Deshmukh died on 20.05.2020 leaving behind

the present Applicant Nos. 1-B and 1-C. Therefore, no steps have been taken as they were in deep sorrow, hence, delay has been caused.

4. Per contra, the learned AGP strongly opposed the application. It is submitted that vide order dated 24.11.2015, passed by the learned Registrar (Judicial), registration of the appeal has already been refused for non removal of office objections and delay of 2940 days has not been sufficiently explained.

5. Needless to say that by the present application, the applicants put forth following prayers:

- "(A) This application may be allowed.
- (B) Applicants 1-B and 1-C may be brought on record as legal heirs of applicant No.1 and abatement may be set aside.
- (C) Delay of 569 days may be condoned for filing this Civil Application. And for this act of kindness and justice petitioners /applicants are duty bound shall every pray.
- (D) Quash and set aside order dated 24.11.2015 passed by this Hon'ble Registrar of this Hon'ble Court.

6. Therefore, it depicts that the applicants made three fold prayers i.e. (i) for settings aside abatement, (ii) permission to bring Applicant Nos. 1-B and 1-C on record as legal heirs of Applicant No.1 who died on 07.07.2020 and (iii) condonation of delay of 569 days (wrongly calculated instead of 2490 days) caused while filing

application for restoration of Appeal of which registration refused vide order dated 24.11.2015 passed by the learned Registrar (Judicial), for non removal of office objections.

7. The starting point of limitation for restoration of appeal would commence with effect from 25.11.2015 when the registration of the appeal was refused. Article 122 of the Limitation Act prescribes 30 days for filing application for restoration of appeal. The applicants have not computed the delay properly. The office note shows that delay of 2940 days caused in filing application for setting aside the order dated 24.11.2015 passed by the Registrar (Judicial). The applicants have not offered any explanation as to why the application not been made within period of 30 days after order of refusal of registration of appeal or within the reasonable period.

8. On perusal of order dated 24.11.2015 passed by the learned Registrar (Judicial), it appears that deficit Court fees of Rs.1,14,030/- was not paid. Sufficient time was already granted to the applicants for payment of court fees, but no court fees paid and no office objections are removed. Ultimately, the learned Registrar refused the registration of the appeal.

9. The learned counsel appearing for the applicants placed reliance on the order dated 30.03.2023 passed by the Coordinate Bench of this Court in Civil Application No. 12070 of 2018, whereby

delay of 23 years caused in filing appeal against the judgment and award passed by the Reference Court has been condoned by relying on the case of **Prashant Gulab Rathod and others Vs. State of Maharashtra and others**(In Review Application No.553/2021 in First Appeal St. No.22555/2019 decided on 15th December, 2023). However, in case in hand, the applicants prayed for condonation of delay caused in restoration of appeal, which has been dismissed for non removal of office deficiencies, prior to more than eight years. Therefore, the said order is not applicable to the facts of the present case.

10. Since, the applicants have not explained the delay of 2940 days properly and no bonafide grounds have been set out, I am not inclined to grant the present application.

11. In view of the above, the present application is rejected. No order as to costs.

(Y. G. KHOBRADE, J.)

JPChavan