

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1651 OF 2024
WITH
WRIT PETITION NO. 2429 OF 2020

Pandurang Vithoba Sutar & Ors.

Applicants /
.. Petitioners

Versus

The State of Maharashtra & Ors.

.. Respondents

-
- Ms. Poonam Pal i/by Mr. Sachin Hande for Applicants / Petitioners
 - Mr. Rohan Bhagat i/by Mr. Vishwanath Talkute for Respondent No. 3
 - Ms. V.S. Nimbalkar, AGP for State

.....
CORAM : MILIND N. JADHAV, J.

DATE : JULY 10, 2024

P. C.:

INTERIM APPLICATION NO. 1651 OF 2024:-

1. Ms. Pal, learned Advocate for Applicants on instructions seeks leave to withdraw the present Interim Application. Leave granted. Interim Application No. 1651 of 2024 is disposed as withdrawn.

WRIT PETITION NO. 2429 OF 2020:-

2. Heard Ms. Pal, learned Advocate for Petitioners; Mr. Bhagat, learned Advocate for Respondent No. 3 and Ms. Nimbalkar, learned AGP for State.

3. Though the challenge is maintained in the present Writ Petition with respect to rejection of Application for condonation of delay of 3

years 1 month and 19 days in filing the Appeal against the Judgment & Decree dated 10.02.2014, I have impressed upon Ms. Pal that before the Petitioners maintain such Application seeking condonation of delay to file regular Appeal, they should satisfy this Court as to what is the nature and entitlement of their right in the suit property. On perusal of the decree dated 10.02.2014, it is seen that the Appellants who are the Plaintiffs have not been able to substantiate any right whatsoever in the suit property. On the contrary there is precursor Suit which was filed prior in point of time and which was determined in favour of Defendant No. 3 who is Respondent No. 3 before me. In that Suit i.e. RCS No. 43/1992, Civil Appeal No. 34/1998 was also filed and determined. Judgment in both these proceedings are against the Appellants (Petitioners herein). They have comprehensively failed to prove that the judgments passed in both these proceedings were illegal which was their case before the Trial Court. It is only thereafter that the Appellants - Plaintiffs have filed a second Suit i.e. RCS No. 244/2002 for the same cause of action. In that view of the matter, I am inclined to agree with the cogent reasons returned by the District Court in its judgment dated 04.02.2020. No fault whatsoever can be found with the reasons which are given for rejection of the Application seeking condonation of delay. If such Application for condonation of delay is allowed by the Court then there will not no end to litigation

and parties will keep on litigating forever creating nuisance for the entire society at large. Court will have to come down with a heavy hand on such litigants who are unable to show any semblance of their substantive right in the suit property.

4. Ms. Pal would submit that she would take appropriate instructions and inform the Court accordingly on the next adjourned date. At her request, stand over to **18th July, 2024 at 2:30 p.m.**

Amberkar

[MILIND N. JADHAV, J.]

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AMBERKAR

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by RAVINDRA
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2024.07.10
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