



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.7954 OF 2023.

IN

FIRST APPEAL NO.948 OF 2014.

Vishnu Daayanand Garad (Deceased) Thr. Lrs.

...Appellants.

Versus

State of Maharashtra and Ors.

...Respondents.

Mr. Vijay R. Garad for the Applicants.

Mr. D. J. Haldankar, AGP for the Respondent Nos.1 and 2.

Coram : Sharmila U. Deshmukh, J.

Date : September 30, 2024.

P. C. :

1. Interim application has been preferred seeking recall of the order dated 12th June 2017 and for condonation of delay of 5 years and 236 days caused in preferring the present appeal.
2. Learned counsel appearing for the applicant submits that the First Appeal was filed challenging the order passed by the Reference Court in LAR No.705 of 2002. First Appeal was admitted on 13th December 2017. He submits that during the pendency of the appeal, Registrar Judicial-II passed a conditional order regarding deposit of printing charges within a period of 2 weeks. He submits that for default

on part of advocate on record printing charges were not deposited. By reason of which the conditional order became operational and the appeal came to be dismissed. He submits that in the year 2017 the applicant had shifted from Vashi to Pune for medical needs and thereafter on 30th November 2017 the applicant has expired. He submits that the legal heirs of the applicant are agriculturists who are unaware of the legal proceedings and did not inform the advocate on record of the death of the original applicant and also the legal heirs were totally unaware that any appeal was preferred by the applicant. He submits that upon receiving information from similarly placed award holder that the appeal has been preferred by the original applicant, inquiry was made by the legal heirs and thereafter Advocate on record was contacted. He submits that it is by this reason that delay of 5 years and 236 days had occurred. He submits that there is sufficient explanation tendered for the delay and therefore the order of 12th June 2017 of Registrar Judicial-II be recalled.

3. *Per contra*, learned AGP submits that delay of 5 years and 236 days has not been sufficiently explained. He submits that it is the responsibility of the concerned advocate and the litigant to keep themselves abreast of the proceedings and be diligent in order to ensure that there is no default in compliance of the orders passed by this Court. He submits that application suffers from unexplained delay

and therefore is required to be rejected.

4. The undisputed position is that First Appeal came to be admitted by order of 13th February 2017. The order of Registrar Judicial-II was conditional order for payment of printing charges within two weeks. Learned counsel for the applicant has submitted that it was due to default on the part of Advocate on record that payment could not be made and neither the same was communicated to the original applicant. Considering that the default is attributed to the advocate on record the litigant cannot be made to suffer for the same. As regards the delay it is the specific pleading in the application that legal heirs were not aware of the filing of the appeal by the original applicant and it is subsequently that they became aware of the said fact and thereafter contacted the Advocate on record. The said explanation tendered is a plausible explanation particularly considering that the proceedings are under the land acquisition Act and the legal heirs as well as original applicant are agriculturists who may not be aware of the legal procedure that they are required to communicate the fact of death of original applicant to the advocate to bring themselves on record.

5. In light of the above, interim application is allowed. Delay of 5 years to 236 days caused in preferring application stands condoned. For the reason stated in the application, order dated 12th June 2017 is

recalled subject to payment of printing charges within a period of four weeks from today.

[Sharmila U. Deshmukh, J.]