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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 237 OF 2015
WITH
CIVIL APPLICATION NO. 325 OF 2017
WITH
CIVIL APPLICATION NO. 238 OF 2015
IN
SECOND APPEAL (ST) NO. 31160 OF 2014**

Balu Appa Ambi since Deceased ... Applicants
Smt. Akatai Balu Ambi (wife) since deceased
through Legal heirs

Vs.

State of Maharashtra through Collector and Others ... Respondents

Mr. S. S. Patwardhan for the Applicants.

Mr. D. J. Haldankar, AGP for the Respondent – State.

CORAM : GAURI GODSE, J.

DATE : 13th AUGUST 2024

ORDER :

1. This application is for condonation of delay of 2 years and 235 days in filing the Second Appeal. The application is filed by the original plaintiffs whose suit for challenging the acquisition proceedings is dismissed and dismissal of the suit is confirmed by the First Appellate court.

2. Learned counsel for the applicants submits that except for respondent no. 6 all the respondents are served in the application. He further submits that respondent no. 6 expired and he had filed Civil Application No. 325 of 2017 for bringing on record the name of heirs and legal representatives of deceased respondent no. 6. Office remark indicates that the said application is dismissed for non-removal of office objections. Learned counsel for the applicants submits that respondent no. 6 is one of the project affected persons who has been allotted part of the suit land.

3. Since the appeal is pending from the year 2014, I called upon the learned counsel for the applicants to point out the merits of the Second Appeal. Learned counsel for the applicants submits that the possession of the suit property was taken pursuant to acquisition proceedings and lands bearing Gat Nos. 367-B and 367-C were taken over in view of acquisition proceedings, which were initiated for Gat No. 367-A. He further submits that only for want of measurement plan the applicants' case was not accepted by both courts. He thus submits that the Second Appeal will require consideration on the aforesaid points.

4. I have perused the papers of the Second Appeal and considered the submissions made on behalf of the applicants. Both the Courts have concurrently held that the applicants were unable to prove that possession of their land was taken over in lieu of acquisition proceedings initiated for Gat No. 367- A. After examining the evidence on record both the courts refused to accept the plaintiff's pleadings regarding the taking over of his land.

5. The First Appellate Court relied upon the well settled legal principles of law regarding Civil Court's jurisdiction for deciding the challenge to the acquisition proceeding. The First Appellate Court has relied upon the decision of the Apex Court in the case of ***S.P. Subramanya Shetty and Others vs. Karnataka State Road Transport Corporation and Others***¹. There cannot be a debate on the legal principles settled with respect to the challenge to the acquisition proceedings before the Civil Court. Thus, on perusal of the impugned judgments, I do not find any error or perversity in the reasons recorded for dismissal of the suit.

6. The Second Appeal thus does not raise any substantial question of law. So far as the Civil Application for condonation of delay is

¹ (1997) 11 SCC 250

concerned though the respondents are served, there is no opposition to the ground raised for condonation of delay. Second Appeal already stands abated against respondent no. 6. Hence for the reasons stated in the application delay is condoned and the application is allowed in terms of prayer clause (a).

7. For the reasons recorded above, Second Appeal does not raise any substantial question of law.

8. Hence Second Appeal is dismissed.

9. In view of the dismissal of the Second Appeal, all pending Civil Applications, are dismissed as infructuous.

[GAURI GODSE, J.]