

Amberkar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 1904 OF 2024**

~~Sunanda Rajaram Chalke~~  
through Legal Heirs  
Ajit Rajaram Chalke & Ors.

.. Petitioners

**Versus**

~~Walkya Budhya Gone~~  
(since deceased) through legal heirs  
Ananta Valkya Gone & Ors.

.. Respondents

- .....
- Mr. Rushikesh Kale for Petitioners

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

**DATE : MARCH 5, 2024**

**P. C.:**

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 05.03.2024. Heard Mr. Kale, learned Advocate for Petitioners.
3. Mr. Kale would submit that the impugned order is passed on 03.05.2014 in Application filed below Exh. 18 by Defendants. Writ Petition is filed on 22.12.2023 i.e. after almost 10 years and it is moved urgently before me today i.e. on 05.03.2024.
4. Suit is filed for specific performance and injunction. Suit property has been purchased by Plaintiffs from the Defendants.
5. It is seen that despite the above order being passed on 03.05.2014, for the past 10 years the said order was not executed. Record further indicates that Defendant Nos.1 to 11 filed Application

on 17.04.2023 before the Trial Court which is at Exh. D – Page No. 89. The learned Trial Court on that Application passed order directing reissue of reminder to the TILR. It appears that the TILR has now attempted to comply with order dated 03.05.2014 and therefore the Petitioners who are Plaintiffs being aggrieved are before this Court.

6. It is seen that what ought to have been done by the Court Commissioner in 2014 was not done. In the Application filed by the Defendants which came to be decided by order dated 03.05.2014, Plaintiffs did not file their say and remained absent on almost all dates. In the Petition filed after 10 years, delay is not explained in any manner and the entire blame is put by the Plaintiffs on their Advocate which can be gathered by reading paragraph No.7 of the Petition. Said explanation is not satisfactory at all. As stated above, Plaintiffs have not explained the delay for challenging the order after 10 years and according to Plaintiffs if they did not contest the Application, nothing prevented them from approaching the appropriate Court for setting aside that order at that time.

7. It is seen that, when the Writ Petition was mentioned at the time of mentioning, the aforementioned important facts were suppressed from the Court. This is so because after hearing the preliminary submissions of the Advocate, learned Advocate assumed that the Court would grant a stay on the Court Commissioner to carry out its duty.

However, when the Petition copy is perused by me, it is seen that not only there is gross delay in filing the Petition, but the Petitioners have also not acted with due diligence. It is averred in the Petition that when the learned Judge reissued reminder on 07.04.2023, at that time the Petitioners learned about the impugned order dated 03.05.2014. Such an averment is made in paragraph No. 8(H) of the Petition. The Petitioners are the Plaintiffs before the Trial Court and therefore it cannot lie in the mouth of the Petitioners to contend that they became aware of the impugned order after 10 years.

8. Though it is argued by the learned Advocate for Petitioners that there is a discrepancy in respect of the contentious area held by the parties and the Court Commissioner should only measure that much area and not the entire survey number as directed by order dated 03.05.2014, the learned Trial Court while passing order dated 03.05.2014 has given cogent reasons which are *prima facie* believable on the face of record.

9. In view of the above I am not inclined to issue notice to the Respondents as prayed for by the Petitioners until the Petitioners satisfy the Court on delay and due diligence.

10. List the Writ Petition for further orders on **19<sup>th</sup> March, 2024.**

[ MILIND N. JADHAV, J. ]

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by RAVINDRA  
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AMBERKAR  
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