

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 20784 OF 2024

Suhas Rangrao Turuke & Ors.

.. Petitioners

Versus

Bhagwan Shiva Turuke & Ors.

.. Respondents

.....

- Mr. Drupad S. Patil a/w Mr. Ajinkya Patil for Petitioners
- Mr. R.V. Patil for Respondent Nos. 1, 2, 4 & 5

.....

CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 4, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 04.09.2024.
3. Heard Mr. Drupad Patil, learned Advocate for Petitioners and Mr. R.V. Patil, learned Advocate for Respondent Nos. 1, 2, 4 & 5.
4. On 25.07.2024, after hearing learned Advocates appearing for Petitioners, this Court passed the following order:-

"1. Mentioned. Not on Board. Taken on Board.

2. Heard Mr. Patil, learned Advocate for Petitioners.

3. Perused the praecipe dated 25.07.2024 and the Writ Petition.

4. By virtue of the impugned order dated 19.06.2024, Civil Miscellaneous Application No.243 of 2023 seeking leave of the Court to file delay condonation application alongwith Appeal to challenge the probate has been allowed.

5. Prima facie, the said order is contrary to the well settled law decided in the case of **Smt. Nola Jonathan Ranbhise Vs. The Union of India and**

Ors¹. Admittedly right to maintain the Appeal of Respondents is available to them, but the same would lie to this Court and not before the District Court.

6. *In view of the above, issue notice to the Respondents. Humdast permitted. In addition to Court's notice, Petitioners are directed to serve the Respondents a copy of this order and copy of the Writ Petition and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Respondents are directed to file Affidavit-in-Reply to the Writ Petition on or before the next date, if so desired.*

7. *Respondents shall take cognizance of this order, Writ Petition as also the decision quoted herein above and accordingly inform the Court on the next adjourned date.*

8. *In the meanwhile, proceedings filed before the learned Trial Court shall stand stayed.*

9. *It is clarified that this Writ Petition shall be disposed at the stage of admission itself on the next adjourned date.*

10. *Stand over to 14th August, 2024 at 02:30 p.m."*

5. Learned Advocate for Respondent is present before me today. He would submit that he has perused the above order and understood the text of the order as also the directions given on the basis of the decision of this Court in the case of *Nola Ranbhise (supra)*. He would submit that if the right of the Respondent to file the Appeal is protected, there would be no difficulty in agreeing to the proposition which has been set out by this Court in the aforesaid order. Undoubtedly the right of Respondent to file Appeal is unfettered and the same can be exercised in accordance with law in the Court of appropriate jurisdiction. In the present case, the jurisdictional Court to file the Appeal will be this Court and not the District Court in view of the subject matter of the case. In that view of the matter, impugned

¹ WRIT PETITION NO.2777 OF 2013 DATED 14.02.2014.

order dated 19.06.2024 along Civil Misc. Application seeking leave of the Court to condone the delay in filing the Appeal is quashed and set aside. Resultantly in view of my above observations, the Civil Misc. Application is also quashed and aside side reserving the right of the Respondent to file Appeal in the appropriate jurisdictional Court as delineated herein above.

6. Time which has been spent by Respondent in filing the present Appeal shall stand dispensed with in the interest of justice.

7. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

Amberkar

RAVINDRA
MOHAN
AMBERKAR
Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2024.09.04
14:23:29
+0530