

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.731 OF 2024
ALONGWITH
INTERIM APPLICATION NO.13953 OF 2024
IN
APPEAL FROM ORDER NO.731 OF 2024

Surekha Prabhakar Dixit and others ... Appellants
versus
Vasanti Murlidhar Potdar and others ... Respondents

Mr. Dilip Bodake a/w Mr. Amar P. Dhumal, Mr. Mohsin Khan, Mr. Viraj Dhumal, for the Appellants/Applicants.

Mr. Manoj A. Patil a/w Mr. Shubham R. Dhenge a/w Ms. Ankita O. Mali a/w Mr. Akash Murudkar, for Respondent Nos.1 to 7.

CORAM : M.M. SATHAYE, J.

DATE : 10th FEBRUARY, 2026.

P.C:

1. While issuing notice to Respondents for final disposal, this Court passed following order on 14.11.2024;

“1. Heard learned counsel for the Appellant. Perused papers. The Appeal is filed challenging order of remand dated 30.04.2024 passed by the learned District Judge, Kolhapur in Regular Civil Appeal No. 203 of 2017.

2. Learned counsel for the Appellant points out that this Appeal is filed challenging the Judgment and Order dated 03.03.2015 in Civil Misc. Application No. 201 of 2012 passed by 4th Joint Civil Judge, Senior Division, Kolhapur exercising jurisdiction u/s.276 of the Indian Succession Act, 1925 for grant of probate. He submits that in view of

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the judgment of this Court (Division Bench) in the matter of **Smt. Nola Jonathan Rambhise V. Union of India & Ors.**¹, the Appeal against the Order dated 03.03.2015 could not have been filed in the District Court and ought to have been filed in this Court (High Court). He submits that a legal aspect of jurisdiction is involved, which goes to the root of the matter and hence the impugned Order is *ex-facie* without jurisdiction. He further submits that pursuant to the directions in the impugned order, the Trial Court is proceeding with the matter and it is kept for hearing on 29.11.2024.

3. Issue notice to the Respondents, returnable on **16.12.2024** for final disposal. In addition to the Court notice, private notice is permitted.

4. Till next date there will be ad-interim relief in terms of prayer clause (a) which reads as under.

“(a) Pending the hearing and final disposal of the present Appeal from Order, this Hon'ble Court be pleased to stay the effect, implementation and operation of the impugned Judgment and order dated 30.04.2024 passed by the Ld. District Judge-1, Kolhapur, in Regular Civil Appeal No. 203 of 2017;”

5. All concerned to act on duly authenticated or digitally signed copy of this order.

2. Learned Counsel for Respondent Nos.1 to 7 appears and fairly submits that in view of the judgment of **Smt. Nola Jonathan Rambhise (supra)**, the appeal ought to have been filed in this Court. He submits that liberty be granted to file necessary appeal and time spent in prosecuting Regular Civil Appeal No.203 of 2017 as well as the time during which the present Appeal From Order was pending be excluded under section 14 of the Limitation Act.

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3. Learned Counsel for the Appellants points out that liberty can be granted to file appeal in this Court, however, that liberty can be exercised only by Respondent No.3 – Ravindra Murlidhar Potdar because he was the only party who had filed Regular Civil Appeal No.203 of 2017. It is not disputed that apart from Respondent No. 3, nobody else had filed appeal.

4. Record shows that while issuing notice, effect, implementation and operation of the impugned order dated 30.04.2024 was stayed on 14.11.2024 till today.

5. Since learned counsel for the Respondents have accepted that the appeal ought to have been filed in this Court and not in District Court, the period from 21.07.2015 to 30.04.2024 (time spent in prosecuting Regular Civil Appeal No.203 of 2017) becomes time spent in Court having no jurisdiction. Since the impugned order was stayed by this Court on 14.11.2024, time between 14.11.2024 till today can also be excluded.

6. In that view of the matter, the **Appeal from Order and pending Interim Application are disposed of** by passing the following order;

: ORDER :

(i) Impugned Judgment and Order dated 30.04.2024 passed by District Judge -1, Kolhapur in Regular Civil Appeal No.203 of 2017 is quashed and set aside, as an order passed without jurisdiction;

(ii) Respondent No.3 – Ravindra Murlidhar Potdar shall be at liberty to file Appeal in this Court alongwith appropriate application for condonation of delay;

(iii) If such Appeal/Application is filed within a period of three weeks from today, while considering the delay condonation application, Respondent No.3 shall be entitled to contend that period between 21.07.2015 to 30.04.2024 and from 14.11.2024 till today, is required to be excluded under section 14 of the Limited Act;

(iv) Rival contentions of both the sides on merits, are kept open.

7. All concerned to act on duly authenticated or digitally signed copy of this order.

[M.M. SATHAYE, J.]