

**SUPREME COURT OF INDIA****Bench: Justices B.R. Gavai and Sandeep Mehta****Date of Decision: 8<sup>th</sup> May 2024**

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024

(Arising out of SLP(C) No. 4034 of 2023)

**Vijay Laxman Bhawe Since Deceased Through His Legal Heirs****...Appellant(S)****Versus****P & S Nirman Pvt. Ltd. And Others ...Respondent(S)****Legislation:**

Indian Evidence Act, 1872

Specific Relief Act, 1963

Section 5 of the Limitation Act, 1963

**Subject:** The appeal challenges the High Court's decision which upheld the trial court's condonation of an extensive delay in filing a restoration application for a dismissed suit regarding land acquisition and ownership.

**Headnotes:**

Property Law – Condonation of Delay – Trial and High Court allowed condonation of delay for a restoration application filed by a non-party to the original proceedings (P & S Nirman Pvt. Ltd.), citing an unregistered Agreement for Sale and Power of Attorney from 2009 with the deceased original plaintiff's legal heirs – The Supreme Court found no legal basis to entertain the application from a non-party, describing the act as unsustainable in law – Held: the trial court's decision to entertain and approve the application filed by a non-party was incorrect, leading to the setting aside of both the trial

court's and the High Court's decisions – Appellant's arguments that the suit was frivolous and the land had already been compensated were noted but not required for decision after finding procedural improprieties [Paras 9, 12-13].

Legal Procedure – Filing by Non-Party – Supreme Court criticized the approach of accepting applications from entities not originally part of the suit, emphasizing that this could lead to misuse by unrelated parties intervening in judicial processes – Held: Such practices could significantly undermine judicial integrity and the proper administration of law, necessitating strict adherence to party-based litigation principles [Para 10].

Implications for Land Acquisition Claims – While the original suit challenged the legality of land acquisition and sought entitlement under CIDCO's Gaonthan Extension Scheme, these issues remained unaddressed substantively due to the procedural flaws highlighted – Trial court directed to consider pending application by actual parties on its merits [Para 14].

Decisions: The judgment of the High Court and the order of the trial court are quashed – The case concerning the procedural improprieties is remanded back for consideration of the pending application by the original plaintiff's legal heirs, to be adjudicated based on its own merits without influence from non-parties [Para 13-14].

Referred Cases: None.

## **J U D G M E N T**

### **B.R. GAVAI, J.**

1. Leave granted.
2. The present appeal challenges the judgment dated 14<sup>th</sup> December 2022, passed by the High Court of Judicature at Bombay (for short, "High Court") in Civil Revision Application No. 269 of 2022, whereby the High Court dismissed the revision application filed by the appellants herein, challenging the order dated 4<sup>th</sup> May 2022, passed by the Civil Judge (Senior Division), Thane, (for short, "trial court") in Civil Misc. Application No. 1473 of 2021, which was filed by respondent No. 1 herein, for condonation of delay in filing of the application for restoration, and seeking thereby to restore the Special

Civil Suit No. 269 of 2002, which came to be dismissed for want of prosecution by the trial court on 3<sup>rd</sup> November 2011.

**3.** Vide an order dated 24<sup>th</sup> April 2023, this Court issued notice to the respondents and stayed the proceedings before the trial court.

**4.** Shorn of details, the facts giving rise to the present appeal are as under:

**4.1** The present appeal is concerned with certain lands situated at Sonkhar Village, in Taluka and District Thane, Maharashtra (hereinafter referred to as “suit land”). There are competing claims with respect to the ownership of the suit land.

**4.2** The Government of Maharashtra, through the Special Land Acquisition Officer, Metro Centre, Thane, vide Award Nos. 1 and 2 in the year 1986 and 1988, respectively, acquired the subject land for public purpose, and handed over the said lands for development/execution to City Industrial Development Corporation, Maharashtra (CIDCO).

**4.3** In the year 2002, Special Civil Suit No. 269 of 2002 (hereinafter referred to as “subject suit”) was filed by the original plaintiff – Pravin Jamndas Thakkar (Kanani) (since deceased and now represented by his legal heirs respondent Nos. 2 and 3), in the trial court against the Government of Maharashtra (defendant No. 1/respondent No. 4 herein), Special Land Acquisition Officer, Thane (defendant No. 2/respondent No. 5 herein), Vijay Laxman Bhawe (Defendant No.3) (since deceased and now represented through his legal heirs – viz. appellant Nos. 1 and 2 herein), Union of India (defendant No. 4/ respondent No. 6 herein) and City Industrial Development Corporation, Maharashtra (CIDCO) (defendant No. 5/ respondent No. 7 herein) for relief of declaration that the acquisition of suit land is illegal, null and void, and in the alternative, if the court holds that acquisition is good then declaration that the plaintiff is entitled to 12½ % Gaonthan Extension Scheme, in lieu of acquired lands as per the Gaonthan Extension Scheme of CIDCO.

**4.4** In the year 2005, the original plaintiff – Pravin Jamndas Thakkar (Kanani) passed away.

**4.5** The legal heirs of the original plaintiff, through their Power of Attorney holder, one Mr. Arunkumar Jayantilal Mucchalla, filed an application for condonation of delay in applying for bringing legal heirs of the plaintiff on record, and filed another application for bringing the legal heirs of the plaintiff on record in the subject suit.

**4.6** Vide order dated 28<sup>th</sup> November 2006, the trial court allowed the application for condonation of delay as well as the application for bringing the legal heirs of the plaintiff on record in the subject suit. However, vide order dated 3<sup>rd</sup> November 2011, the trial court dismissed the subject suit for want of prosecution.

**4.7** On 7<sup>th</sup> November 2019, respondents No. 2 and 3, i.e., the legal heirs of the plaintiff, filed an application, viz., Misc. Civil Application (MCA) No. 1082 of 2019 in the subject suit, seeking condonation of delay of 8 years and 4 days in filing an application for restoration of subject suit. This application is still pending adjudication.

**4.8** On 12<sup>th</sup> October 2021, i.e., during the pendency of the aforesaid application filed by the legal heirs of the plaintiff, respondent No. 1, a private limited company, claiming to be the “assignee” from the legal heirs of the plaintiff, filed an application viz., Misc. Civil Application (MCA) No. 1473 of 2021 in the subject suit, seeking condonation of delay of 9 years and 11 months in filing the application for restoration of the subject suit. It was the case of respondent No. 1, that it had entered into an Agreement for Sale dated 8<sup>th</sup> December 2009, with the legal heirs of the plaintiff, i.e., respondents No. 2 and 3 and agreed to procure benefit arising out of the subject land and in lieu thereof had paid part consideration of Rs. 1.51 crore to the legal heirs of the plaintiff, i.e., respondents No. 2 and 3 alongwith an irrevocable Power of Attorney dated 8<sup>th</sup> December 2009, thereby appointing respondent No. 1 as their constituted Attorney for doing all such acts, deeds and things to implement the Agreement for Sale.

**4.9** Vide order dated 4<sup>th</sup> May 2022, the trial court allowed the restoration application being MCA No. 1473 of 2021 filed by respondent No.1, subject to the payment of costs of Rs. 15,000/-, thereby condoning the delay of 9 years and 11 months.

**4.10** Aggrieved by the aforesaid order of the trial court dated 4<sup>th</sup> May 2022, the appellants filed Civil Revision Application No. 269 of 2022 before the High Court.

**4.11** The High Court, vide impugned judgment, dismissed the civil revision application filed by the appellants, upheld the order of the trial court and only enhanced the costs awarded from Rs. 15,000/- to Rs. 1,50,000/-.

**4.12** Being aggrieved thereby, the present appeal.

- 5.** We have heard Shri Mukul Rohatgi, learned Senior Counsel appearing on behalf of the appellants and Shri C.A. Sundaram, learned Senior Counsel appearing on behalf of the respondents.
- 6.** Shri Rohatgi, learned Senior Counsel appearing for the appellants submitted that the learned trial court has totally erred in entertaining the application filed at the behest of a private party. It is submitted that respondent No.1 is totally a stranger to the proceedings. He submitted that, when an application filed by the legal heirs of the original plaintiff, i.e. respondents No. 2 and 3 herein being MCA No. 1082 of 2019 for condonation of delay in filing an application for restoration of the subject suit was pending since 7<sup>th</sup> November 2019, there was no occasion for the learned trial court to have considered the application filed by a stranger subsequently on 12<sup>th</sup> October 2021.
- 7.** Shri Rohatgi further submitted that, as a matter of fact, the subject suit itself is a frivolous one. The suit land belonged to the predecessors of the appellants and it was acquired by the State and the compensation duly received by the appellants. The proceedings for enhancement are also pending before the High Court. It is submitted that entertaining the application at the instance of a stranger for condonation of delay in filing an application for restoration of a frivolous suit is nothing else but a travesty of justice. It is submitted that, for the same reasons, the judgment of the High Court is also not sustainable.
- 8.** Shri Sundaram, learned Senior Counsel appearing on behalf of the respondents, on the contrary, submitted that respondent No.1 has accrued a right in the *lis* on account of an Agreement for Sale dated 8<sup>th</sup> December 2009 entered into between it and the legal heirs of the original plaintiff. It is submitted that, since respondents No.2 and 3 were not prosecuting the application for condonation of delay in filing the application for restoration of the subject suit, respondent No.1 was justified in filing such an application. It is submitted that, in any case, no interference is warranted in the concurrent orders of the trial court and the High Court.
- 9.** We find that the approach of the trial court in entertaining the application filed at the behest of respondent No.1 is totally unsustainable in law. The claim of respondent No.1 is on an unregistered Agreement for Sale dated 8<sup>th</sup> December 2009. We do not wish to comment anything upon the said Agreement for Sale inasmuch as the same may prejudice the rights of the parties. However, entertaining an application filed at the behest of a stranger

for condonation of delay in filing an application for restoration of the subject suit is totally unsustainable in law. Admittedly, respondent No.1 has not even been impleaded in the subject suit. As such, the application filed at the behest of the stranger, who is not a party to the proceedings, is totally illegal. If the approach as adopted by the trial court is approved, any Tom, Dick and Harry would be permitted to move an application for condonation of delay in filing an application for restoration of the suit even if he is not a party to the subject suit.

- 10.** Apart from that, an application for condonation of delay in filing an application for restoration of the subject suit at the behest of the legal heirs of the original plaintiff is very much pending since 7<sup>th</sup> November 2019. It is difficult to understand as to what was the compelling necessity for the trial court to have entertained the application filed at the behest of respondent No.1 after a period of two years from the date of filing of the application by respondents No.2 and 3. The trial court could have very well decided the application filed by respondents No.2 and 3 on its own merits in accordance with law. We do not appreciate the propriety in keeping the application filed by the legal heirs of the original plaintiff in 2019 pending and deciding the subsequent application filed by respondent No.1 in October 2021 within a period of six months. We do not wish to say anything more on it.
- 11.** Though, it was urged by the appellants before the High Court that respondent No.1 was totally a stranger and the reasons given for condonation of delay did not constitute the “sufficient cause”, and though the judgments of this Court were relied upon to contend as to why the application ought not to have been allowed by the trial court, the High Court has totally ignored the same.
- 12.** In light of the view taken by us, though it is not necessary for us to consider in detail as to whether the reasoning given by the trial court and the High Court as to whether respondent No.1 had made out a “sufficient cause” for condonation of delay is correct or not, we are of the *prima facie* view that the reasoning given by the trial court as well as the High Court for condoning such an inordinate delay will not come under the ambit of “sufficient cause” as has been delineated by this Court in a catena of judgments.
- 13.** We find that the order of the trial court as well as the High Court are not sustainable in law. The appeal is therefore allowed. The judgment dated 14<sup>th</sup> December 2022, passed by the High Court in Civil Revision Application

No. 269 of 2022, and the order dated 4<sup>th</sup> May 2022, passed by the trial court in Civil Misc. Application No. 1473 of 2021 are quashed and set aside.

- 14.** However, we clarify that the application filed by respondents No.2 and 3 being MCA No. 1082 of 2019 would be considered by the trial court on its own merits in accordance with law.
  
- 15.** Pending application(s), if any, shall stand disposed of. No costs.

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