



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2370 OF 2023

IN

FIRST APPEAL NO.820 OF 2019.

Narayan Raghu Thombare
(deceased) Maruti N. Thombare
(deceased) through Legal
Representative Savitribai M. Thombare
and Ors.

...Appellants.

Versus

Salu Raghu Thombare (deceased)
thr. Legal Representatives;
Rjaram Salu Thombare and Ors.

...Respondents.

Mr. Atharva R. Bhingardeva i/b Mr. Vaibhav R. Gaikwad for the appellants.
Mr. Y. G. Thorat i/b Mr. Ashok B. Tajane for respondent Nos. 1A to 1I and 2(a) to 2(c).

Coram: Sharmila U. Deshmukh, J.

Date : 9th July, 2024.

P. C.:

1. Heard.
2. By this Interim Application, the applicants seeks recall of the conditional order passed by this Court on 24th April 2019 while admitting the First Appeal that in event paper book is not filed within



a period of one year, the First Appeal shall stand dismissed without further reference to the Court.

3. Learned counsel appearing for the appellant submits that though the order of filing of private paper book within one year was passed due to oversight the same was not filed. He further submits that in the meantime due to Covid pandemic, the country was under lockdown and the Hon'ble Apex Court had extended the period of limitation. He therefore submits that the actual period of delay is about 2 years 342 days which is required to be condoned in view of the decision of the Apex Court.

4. *Per contra*, learned counsel for the respondent would oppose the application and would submit that limitation which was extended by the Hon'ble Supreme Court is not applicable in the present case and this is not case of limitation for filing the appeal but for restoration of first appeal which is dismissed for default for non filing of paper book. He would further submit that despite sufficient time being granted there is non compliance of the order of 24th April 2019 and there is considerable delay which has not been sufficiently explained.

5. The present First Appeal was admitted by order of 24th April



2019 and conditional order was passed for filing of private paper book within a a period of one year. The contention of the learned counsel for the applicant is that though the order was passed, the private paper book was not filed within a period of one year due to oversight. Filing of private paper book is the responsibility of the advocate for the applicant and due to failure on the part of the advocate, litigant should not be made to suffer. The First Appeal has been filed in the land acquisition matter and the same cannot be thrown out at the threshold for failing to comply with the requirement of filing of private paper book. No doubt it is expected that the advocate on record should be diligent and comply with the order passed especially when the orders are conditional orders. However for the negligence of the advocate, the litigant cannot be made to suffer.

6. In view of above, Interim Application is allowed. Delay is condoned. The order of 24th April 2019 is recalled. First Appeal is restored to file. Time to file the private paper book is extended for a period of 6 months from today.

[Sharmila U. Deshmukh, J.]