

April 26 0502

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.735 OF 2022 (Delay)
IN**

APPEAL NO. AT004000000053722 OF 2022

Along with

MISC. APPLICATION NO.157 OF 2024 (Prod. Of docs.)

M/s. Shiv Sai Developers Nagpur

Thr. Its Managing Partner

Shri. Hemantbhai S/o. Late Shri. Parbatbhai Patel

Resident of, Plot NO. Q-18, Laxmi Nagar, Nagpur – 440022.] ... *Applicant*

- versus -

Ashokkumar Narayanrao Bopche

R/o. Annapurna Bhawan, Aakbar Ward,

Sseoni (Madhya Pradesh – 480661.

... *Non-applicant*

ALONG WITH

MISC. APPLICATION NO.736 OF 2022 (Delay)

IN

APPEAL NO. AT004000000053723 of 2022

Along with

MISC. APPLICATION NO.158 OF 2024 (Prod. Of docs.)

M/s. Shiv Sai Developers Nagpur

Thr. Its Managing Partner

Shri. Hemantbhai S/o. Late Shri. Parbatbhai Patel

Resident of, Plot NO. Q-18, Laxmi Nagar, Nagpur – 440022. ... *Applicant*

- versus -

1. Ashish s/o Shantaram Dharpure

2. Shantaaram s/o. Damodar Dharpure

R/o. Senior HIG Duples No.1,

Housing Board Colony, Chandangoan,

Chindwara – 480001, Madhya Pradesh.

... *Non-applicants*

ALONG WITH
MISC. APPLICATION NO.737 OF 2022 (Delay)
IN
APPEAL NO. AT004000000053724 of 2022
Along with
MISC. APPLICATION NO.159 OF 2024 (Prod. Of docs.)

M/s. Shiv Sai Developers Nagpur]
Thr. Its Managing Partner]
Shri. Hemantbhai S/o. Late Shri. Parbatbhai Patel]
Resident of, Plot NO. Q-18, Laxmi Nagar, Nagpur – 440022.] ... *Applicant*

- versus -

1. Aarti d/o. Shantaram Dharpure]
2. Shantaram s/o. Damodar Dharpure]
R/o. Senior HIG Duples No.1,]
Housing Board Colony, Chandangoan,]
Chindwara – 480001, Madhya Pradesh.] ... *Non-applicants*

Mr. Amit Bhate, Advocate for Applicant.
Ms. Namrata Solanki, Advocate for Non-applicants.

CORAM: SHRI S.S. SHINDE, J., CHAIRPERSON

DR. K. SHIVAJI, MEMBER (A)

DATE : 26th APRIL 2024

(THROUGH VIDEO CONFERENCE)

ORDER [PER: DR. K SHIVAJI, MEMBER (A)]

By these applications, Applicant is seeking condonation of delay in filing of captioned appeals on 16th April 2022 under The Real Estate (Regulation and Development) Act of 2016 (hereinafter referred to as, "the



Act") seeking *inter alia* to quash and set aside the order dated 6th March 2020 passed by learned Member, Maharashtra Real Estate Regulatory Authority (hereinafter referred to as "MahaRERA" in short) to the extent that it directs handing over of the possession of the subject duplex tenements to the non-applicants allottees in time bound manner despite defaults in the payments on the part of non-applicants in Complaint Nos. CC004000000020129, CC004000000020132 and CC004000000020130 lodged before MahaRERA.

2. Captioned applications arise out of similar backgrounds and circumstances as well as are giving rise of identical questions of law. Accordingly, these applications are heard together and are being disposed of by this common order as hereunder.
3. It is the case of the Applicant that it is developing a duly registered real estate project known as "Saidham Vasahat" located at Nagpur. Whereas non-applicants are purchasers of row houses and are Complainants before MahaRERA. For convenience, Applicant and Non-applicants will be addressed hereinafter in their original status before MahaRERA as Promoter and Complainants respectively.
4. For the purpose of disposal of present applications, it is not necessary to narrate facts in detail. Suffice it to say that non-applicants filed separate individual complaints before MahaRERA on account of *inter alia* delay/ failure to handover the delivery of possession of their respective row houses/ real estate units by completing the said project works in its entirety in time bound manner and sought reliefs for completion of the pending works and to handover possessions of the respective units with interests for the delay in delivery of possessions of respective units under the Act of 2016.
5. Applicant promoter disputed claims of the complainants allottees by filing replies and further submitting that the delay/ non-completion is due to

change in the jurisdiction of the Planning Authority from Gram Panchayat to Nagpur Municipal Corporation in 2014 and delay is despite following up for the required approvals.

6. Upon hearing the parties, learned Member, MahaRERA passed common impugned order dated 6th March 2020 in each of the complaints whereby, directed applicant promoter to complete the pending works and provide all amenities as per the registered agreements for sale within three month and to handover possessions of the said real estate units after getting Occupancy Certificate.
7. Being dissatisfied, Applicant has challenged the common impugned order dated 06th March 2020 by filing the present three separate appeals after expiry of the prescribed limitation period of 60 days on 16th April 2022, seeking reliefs *inter alia* to quash and set aside the impugned order dated 6th March 2020 to the extent that it directs handing over of the possession of the subject duplex tenements to the non-applicant allottees in time bound manner despite default in the payment on the part of non-applicants and other reliefs in the facts and circumstances of the case.
8. Heard learned counsel for parties *in extenso*.
9. Applicant has sought condonation of said delay in filing the captioned appeals by filing above applications on various grounds as set out in the applications and learned counsel for Applicant made manifold submissions as follows; -
10. Advocate Bhate, appearing for applicant promoter submits that the captioned applications have been filed within the limitation period as per the stay to the limitation granted by the Hon'ble Supreme Court of India in Suo Moto Writ Petition (Civil) No.3 of 2020 with effect from 15th March 2020. However, by way of abundant precaution and to counter any hyper technical objections of limitations.



- a) Learned counsel submits that applicant could not file the captioned appeals earlier because of his advanced age and because, he is suffering from heart ailments having high risk group and was advised to remain at home during Covid-19 lockdowns due to its associated lockdowns and other restrictions to travel.
- b) No prejudice would be caused to non-applicants as they have also filed cross appeals challenging the very same common impugned order, which has been challenged in the present appeals as well and both sets of appeals can be heard and adjudicated together. Therefore, urged that captioned delay in filing of the appeals, if any be condoned in the interest of justice.
- c) While filing subsequent applications, applicant promoter further submits that as per the order passed by the Hon'ble Supreme Court of India in *Suo Moto Writ Petition (Civil) No.3 of 2020*, the said period of limitation from 15th March 2020 till 28th February 2022 has been expressly waived. Applicant further submits in the additional affidavit that applicant was under bona fide impression that he continued to be governed by the said judgment and he was unable to visit MahaRERA, Mumbai to obtain certified copy of the judgment, which was mandatorily required for filing appeal physically.
- d) Judgment dated 17th December 2021 passed by the Hon'ble Delhi High Court in the case of *H. T. Media Limited Ltd. Vs. Brainlink International (CS(COMM) 119/2020)* has taken a slightly different view in so far as the commercial suits are concerned, wherein statute itself do not permit the court to condone delay beyond 120 days in case of commercial suits and Section 5 of the Limitation Act is expressly barred under Order VIII Rule 1



of CPC. Whereas, in the present case, Section 44 of the Act enables the Tribunal to condone delay in preferring appeals.

- e) Moreover, in the case decided by the Hon'ble Delhi High Court, defendants therein had appeared in the said proceedings and had filed other applications. Hence, The Hon'ble High Court came to the conclusion that they were not prevented from filing written statement, when they had already filed other applications. The said view of refusing to condone the delay by the Hon'ble High Court was taken in those special circumstances of that case. Therefore, these facts are totally distinguishable from the present case and, the said judgment of the Hon'ble Delhi High Court is not applicable to facts of the present appeals for the purpose of condonation of delay.
 - f) Moreover, the order passed by the Hon'ble Supreme Court in Suo Moto Writ Petition (Civil) No.3 of 2020 is after exercising its plenary powers under Article 142 read with Article 141 of the Constitution of India. Therefore, the delay in filing of the captioned appeal was due to bona fide reasons and deserves to be condoned.
11. Per Contra, learned counsel for non-applicants strongly resisted these applications and sought to reject these prayers by submitting as follows; -
- a. Applicant was well aware about the common impugned order dated 06th March 2020 passed by MahaRERA because, the applicant was appearing in the cross appeals filed by the non-applicants allottees in the year 2020 itself.
 - b. Applicant is seeking condonation of delays on account of the advanced age of the applicant around 80 years as well as due to difficulties faced due to Covid-19 pandemics and its associated lockdowns-travel restrictions. However, applicant was required to file captioned appeals in the tribunal,



- only online and this can be filed from anywhere even during Covid-19 pandemics. Therefore, the question of lockdowns does not arise at all.
- c. Additionally, applicant has been continuously appearing right from first hearing itself from the year 2021 onwards in the cross-appeals filed by non-applicants before this Tribunal and have also filed Affidavit-In-Reply in cross-appeals, which were duly notarised during the lockdowns period itself.
 - d. Applicant has challenged the said common impugned order after the passage of two years as an afterthought and thereby, it is attempting to take an unfair advantage of the order the Hon'ble Supreme Court in the context of the Covid-19 pandemics for extension of the limitation period and has sought to impose a heavy cost on applicant, if the delay is condoned.
 - e. Applicant has failed to plead any specific reason worthy for consideration for condonation of huge delay and therefore the captioned applications are not maintainable.
 - f. If the applications are allowed then, it will cause grave injustice to non-applicants allottees and therefore, these misc. applications be rejected with costs.
 - g. While filing the reply on the additional affidavit filed by applicant on the condonation of delay, non-applicants further submits that the grounds mentioned by the applicant for delay in getting the certified copy of the impugned common order is completely baseless and untrue, because the copy of the order is available on MahaRERA website and the application for the certified copy is required to be filed online on the website itself.
 - h. Due to non-compliance of the common impugned order dated 06th March 2020 in non-execution application filed by non-applicants allottees,

MahaRERA passed an order dated 05th January 2022 and imposed fine of ₹ 10 lakhs, further imposed further penalty of ₹ 25,000/- per day in case of default.

- i. The judgment dated 17th December 2021 passed by the Hon'ble Delhi High Court in the case of HT Media Limited & Anr. V. Brain link International (Supra) is completely applicable in the present case.
 - j. In view of above, applicant has failed to explain any cogent reasons, which is worthy for consideration, much less the sufficient reasons required for condonation of delay, and as such, application is clearly attempting to misuse the order the Hon'ble Supreme Court passed in relation to the Covid-19 pandemic.
 - k. If the said applications are allowed, then it will cause grave injustice to non-applicants because applicant is purposefully prolonging the proceedings of the cross-appeals as well as the captioned appeals besides that, applicant has failed to handover possessions of the subject duplex real estate units till date even after the passage of 12 years of time.
 - l. Therefore, the captioned Misc. Applications be rejected with costs and if these are allowed then, it should be at heavy cost on applicant.
12. From the rival submissions, a short point that arises for our determination is whether Applicant has explained sufficient cause for condonation of delay in filing instant appeals and to this our finding is in the negative for the reasons to follow: -

REASONS

13. Before we advert to the merits of the controversy let us consider the settled position of law on condonation of delay.



14. In case of Collector, Land Acquisition, Anantnag & Anr. Vs. Ms. Katiji and Others [(1987) 2SCC 107]; The Hon'ble Supreme Court in paragraph 3 reiterated the principles as follows: -

- a) *"Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- b) *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned, then highest that can happen is that a cause would be decided on merits after hearing the parties.*
- c) *"Every day's delay must be explained", does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense and pragmatic manner.*
- d) *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred and other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
- e) *There is no presumption that delay is occasioned deliberately or on account of culpable negligence or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*
- f) *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. It is needless to state that there should be liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, but at the same time 'sufficient cause' should be understood in proper spirit and be applied in proper perspective to the facts and situations of a particular case."*



15. In this connection, principles culled down by the Hon'ble Supreme Court in *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Ors.* [(2013) 12 SCC 649] are as hereunder;

- *Lack of bona fide imputable to a party seeking condonation of delay is significant and relevant fact; -*
- *The concept of liberal approach has to encapsulate the concept of reasonableness and totally unfettered free play is not allowed; -*
- *The conduct, behavior and attitude of a party relating to its negligence. cannot be given a total go-bye in the name of liberal approach.*
- *If the explanation offered is concocted or the grounds urged in the applications are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such litigation; -*
- *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of the law of limitation; -*
- *An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harboring the notion that the Courts are required to condone the delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system; -*
- *The increasing tendency to perceive the delay as a non-serious matter and hence lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal Parameters".*

16. In the above background, we have to now examine, whether grounds put forth by Applicant amount to sufficient cause within the provisions of Section 44 of the Act.

17. It is not in dispute that order in the complaint was passed by MahaRERA on 6th March 2020 and the instant appeals have been filed on 16th April 2022



challenging this order. Whereas every appeal under Section 44 (1) of the Act is statutorily required to be filed within a period of 60 days from the date on which, a copy of the order is received/known by the aggrieved person. Whereas at the time of oral argument, learned counsel for the applicant submits that the applicant came to know about the passing of the common impugned order dated 06th March 2020 in January 2021 in view of cross appeals and has filed the same on 16th April 2022 with delay of 710 days beyond the permissible limitation period.

18. However, learned counsel for the applicant promoter submits that captioned appeals have been filed within the limitation period, if we take into the account of granting extension of the limitation period by the Hon'ble Supreme Court of India in Suo Moto Writ Petition (Civil) No.3 of 2020 with effect from 15th March 2020 till 28th February 2022 in order to overcome difficulties faced by litigants due to then prevailing COVID-19 pandemics. However, the captioned miscellaneous applications for condonation of delay have been filed as abundant precautions if this is opposed after taking an hyper technical grounds. Learned counsel for the applicant promoter therefore, urged that captioned applications be allowed, and the said delay be condoned because the captioned appeal could not be filed earlier due to advanced age of the applicant promoter, who is suffering from the heart ailments, having high risk group and was advised to remain home during COVID-19 lockdowns. Therefore, applicant could not travel to Mumbai to get certified copy of the common impugned order and file the captioned appeals earlier. However, the contentions of the applicant cannot be accepted because of the followings; -

- i. Appeals in the tribunal are expected to be filed online and therefore, it can be filed from anywhere in time.



- ii. Moreover, perusal of the record reveals that applicant promoter has not filed any medical certificate in support of these contentions.
- iii. Additionally, applicant is a promoter, who has a number of other Management staffs working in the company including legal staff/ team, who could have taken steps to file the appeals in time. But, applicant has failed to do so. Moreover, applicant has been attending all through in the cross appeals filed by non-applicants right from the first day of its hearing in the same tribunal and has even filed reply, which has been duly notarised during this period itself.

Therefore, these contentions of the applicant promoter are not found cogent and convincing.

19. Learned counsel for the applicant further submits that as per the order passed by the Hon'ble Supreme Court of India in Suo Moto Writ Petition (Civil) No.3 by 2020, the said period of limitation from 15th March 2020 till 28th February 2022 has been expressly waived/ Limitation period has been extended. Accordingly, captioned appeals have been filed within the limitation period and therefore, there is no delay in filing these appeals. Learned counsel contended that the Judgment dated 17th December 2021, passed by the Hon'ble Delhi High Court in the case of H. T. Media Limited Ltd. Vs. Brainlink International (CS(COMM) 119/2020 has taken a slightly different view in so far as the commercial suits are concerned, wherein statute itself do not permit the court to condone delay beyond 120 days in case of commercial suits and Section 5 of the Limitation Act is expressly barred under Order VIII Rule 1 of CPC. Whereas, in the present case, Section 44 of the Act enables the Tribunal to condone delay in preferring appeals. The said view of refusing to condone the delay by the Hon'ble High Court was taken in those special circumstances of that case. Therefore, these facts

are totally distinguishable from the present case and, the said judgment of the Hon'ble Delhi High Court is not applicable to facts of the present appeals for the purpose of condonation of delay.

20. In order to examine these contentions of the applicant promoter, it is apposite to reproduce para 5.3 of the order of The Hon'ble Supreme Court of India in *Suo Motu writ petition (C) no. 3 of 2020* in para 5 of its order dated 10th January 2022 as follows; -

- i. *"The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
- ii. *Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
- iii. *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply."*

21. It is more than evident from the order of The Hon'ble Supreme Court in *Suo Motu (Civil) Writ Petition No.3 of 2020 (supra)* that the said order is *for all judicial or quasi-judicial proceedings and is ordered to be extended to all persons for limitation period of 90 days from 01.03.2022.*

22. However, meticulous perusal of the order dated 17th December 2021 passed by The Hon'ble Delhi High Court in the case of *HT Media Limited & ANR. vs. Brainlink International, Inc. and ANR* dated 14th February 2022, (in short "HT Judgement"), shows that, **if litigant was appearing before the court several times during the pandemic, then, the benefit/s of extension**



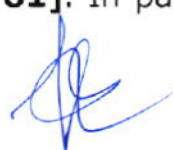
of limitation granted by the Hon'ble Supreme Court owing to pandemic cannot be extended to them. Further perusal of the order of the Hon'ble Delhi High Court shows that the said matter was relating to filing of written statement in the same Court and parties were appearing through their counsel continuously on various dates from 29th May 2020 onwards as mentioned in para 3 of the judgement of the Hon'ble Delhi High Court. Applicant therein, still sought condonation of delay in filing written submission in the same proceeding by citing alleged difficulties faced by Covid by relying on the judgment of the Hon'ble Supreme Court.

23. Hon'ble Supreme Court has dismissed the Special Leave to Appeal of the order of the Hon'ble Delhi High Court, vide its order dated 17th December 2021 by making similar observations as *"in the facts and circumstances of the case and keeping in mind the conduct on the part of the petitioners and when, even during the pandemic the petitioner participated in the proceedings, which has been reflected in para 3 of the impugned order, we are in complete agreement with the view taken by the High Court."* Therefore, the view taken by The Hon'ble Delhi High Court in aforesaid exposition has been upheld by The Hon'ble Supreme Court of India in a Special Leave to Appeal no. 3579/ 2022 decided on 14th March 2022.
24. Whereas facts of the case on hand as mentioned herein above, it is not in dispute that applicant promoter has been continuously appearing right from the first hearing in January 2021 onwards in the cross appeals filed by the non applicant allottees in the same tribunal challenging the very same common impugned order dated 6th March 2020 and has even, filed reply, which has been duly notarised during this Covid period itself.
25. Therefore, in view of the judgement of the Hon'ble Delhi High Court, which has been upheld by the Hon'ble Supreme Court, it is more than evident that



there was no difficulty for applicant in filing of these captioned appeals in time before this tribunal, more particularly because the applicant promoter was not only appearing in the cross appeals in the tribunal during the COVID time period itself and has also filed reply, which has been notarized during the COVID-19 pandemic itself. Therefore, these are the clinching evidence to show that applicant had faced no difficulties at all whatsoever. Accordingly, order dated 17th December 2021 passed by The Hon'ble Delhi High Court in the case of HT Media Limited & ANR. vs. Brainlink International, Inc. and ANR dated 14th February 2022 is squarely applicable in the instant case. Thus, applicant promoter is not entitled to get the benefits of the order of the Hon'ble Supreme Court for extension of the limitation period due to COVID related difficulties.

26. In the present case, the impugned order is dated 6th March 2020, Applicant has failed to produce even a single concrete and tangible supporting evidence on record demonstrating timely action, no step is seen taken by Applicant for filing the appeal within time after passing of the order. All these, indicate that Applicant has *prima facie* not taken any visible, tangible and demonstrable action and the captioned appeals have been filed as an afterthought. Therefore, Applicant was casual, non serious and not vigilant about its rights and law will not benefit such non-vigilant litigants for delay.
27. It is true that length of delay is not important, but acceptability of explanation is important criteria as primary function of Tribunal is to adjudicate dispute between the parties and to advance substantial justice. The Hon'ble Supreme Court summarized the law on the issue in **Basawaraj and Anr vs. Special Land Acquisition Officer [(2013) 14 SSC 81]**. In para 15 the Hon'ble Supreme Court held thus -



"15. The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the Applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature".

28. In the instant case, Applicant has made only vague and unsubstantiated submissions. Whereas non-applicants has demonstrated and effectively controverted all the contentions raised by Applicant. Despite providing enough opportunities, Applicant has failed even remotely to show any meaningful and cogent reason in support of the condonation of delay, leave aside the much-needed sufficient cause, which is required for condonation of delay.
29. Further, it is also significant to note that Applicant is not a person of ordinary prudence. It is a promoter company, managed by educated functionaries, who know their business activities very well in the real estate markets. Keeping in view of the proposition of law laid down by the Hon'ble Supreme Court relating to condonation of delay as above and having regard to the totality of facts and circumstances of this case as discussed above, Applicant is found to be casual and non-serious in preferring the appeal against the

impugned order. Therefore, in the absence of cogent reasons to condone enormous delay of 710 days in filing of the captioned appeal and in order to avoid injustice to non-Applicant, we are of considered view that the applications for condonation of delay for 710 days are devoid of merits and do not deserve to be allowed. Accordingly, solitary point for determination is answered in the negative and we proceed to pass the following order: -

ORDER

- (a) Captioned applications with prayers for condonation of delay stand rejected.
- (b) Misc. Application Nos. 735, 736, and 737 of 2022 for condonation of delay stand dismissed and disposed of.
- (c) In view of dismissal of Misc. Applications for condonation of delay, pending captioned Appeal Nos. AT – 53722, AT – 53723 and AT – 53724 would not survive, consequently stand disposed of.
- (d) In view of disposal of captioned appeals as above, other pending Misc. Applications will not survive. Hence, stand disposed of.
- (e) Applicant promoter to pay cost of Rs. 5,000/- for each captioned appeal towards legal expenses of non-applicants, directly to their accounts within three weeks from the date of uploading of this order.
- (f) In view of the provisions of Section 44(4) of the Act of 2016, copies of the order shall be sent to the parties and to MahaRERA.


(DR. K. SHIVAJI)


(S. S. SHINDE, J.)