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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.343 OF 2012
WITH
CROSS OBJECTION (ST.) NO.16313 OF 2026
WITH
CIVIL APPLICATION NO.354 OF 2012**

The General Manager,
Bombay Electric Supply and Transport
Undertaking, Electric House, Colaba,
Mumbai – 400 101.

....Appellant/Applicant
(Original Opposite party)

V/s.

1. Usha Indrajeet Yadav
aged 35 years, widow of the deceased

2. Kum. Sharmila Indrajeet Yadav
aged 20 years,

3. Rahul Indrajeet Yadav
aged 11 years, son of the deceased

All residing at Azad Chawl Committee,
Opp. Kumar Village, BEST Chowkey,
in front of Cave Yard Wadar Pada,
Kandivali (E),
Mumbai – 400 101.

....Respondents
(Original Applicants)

Mrs. Karishma Jhaveri i/by M/s. Navdeep Vora & Associates for the
appellant (BEST Undertaking).

Mr. T. J. Mendon for the respondents.

CORAM : JITENDRA JAIN, J.
DATED : 22 JULY 2026

JUDGMENT :

1. Affidavit-in-reply dated 13 July 2026 by the appellant opposing the cross-objection is taken on record.
2. The first appeal had come up for final hearing on 9 June 2026. The Learned counsel for the Appellant- BEST Undertaking sought time to take instructions from the appellant whether to withdraw the appeal. The matter was therefore, adjourned to 23 June 2026. Meanwhile, the original claimants/ respondents on 12 June, 2026 filed cross objection for enhancement.
3. In the cross objection, the claimants have stated that the first appeal was admitted on 31 March, 2023 and notified for final hearing on 23 June 2026 and therefore cross objection having been filed on 12 June 2026 is within the period of limitation.
4. The appellant-BEST Undertaking has opposed the cross objection having been filed within time and has filed a reply in which it is stated that when the appeal was admitted on 18 April 2012, the claimants were represented by an advocate and therefore, they had full knowledge that their matter will be taken up for final hearing after admission. She further submitted that there is no reason given as to why the cross objection was not filed within 30 days from the date of admission and further in the absence of any application for extension of time to file cross objection from the said date or an

application for condoning the delay, the cross objection is not maintainable. She further submitted that appellant are ready to withdraw if this Court dismisses cross-objection on limitation.

5. I have heard learned counsel for the appellant-BEST Undertaking and the original claimants.

6. The first appeal was filed by BEST-Undertaking on 20 January 2012.

7. On 9 February 2012 delay in filing the appeal by the appellant BEST Undertaking was condoned and the order of the Tribunal was stayed subject to the deposit of the compensation. On this day there is no appearance shown on behalf of the claimants-respondents.

8. On 22 February 2012, respondents-claimants entered their appearance by filing *Vakalatnama* of the advocate Mr. T. J. Mendon. On 18 April 2012, when the appeal was admitted claimants were represented by advocate Shri T J Mendon. It is noted therein that the delay is condoned vide order dated 9 February 2012, but certification of stay is awaited.

9. On 18 April 2012, this court admitted the first appeal after hearing the appellant-BEST and advocate Mr. T J. Mendon for respondent Nos.1 to 3. Mr. Mendon filed his *Vakalatnama* before the admission of the appeal as per the office noting dated 28 September 2022 i.e. on 22 February 2012. On 12 November 2022, the matter was listed before Lok Adalat, wherein the appellant and respondents were represented by their respective advocates. On 11 February 2023, again

the matter appeared before Lok Adalat and both the parties were represented by their advocates. Similarly, on 9 September 2023, the matter appeared before Lok Adalat and the advocates for both the parties were present. On 9 September 2023, the panel of Lok Adalat directed that the matter be listed before the regular court.

10. Thereafter on 9 June 2026, the matter was listed for final hearing since it was already admitted but it was adjourned to 23 June 2026 to enable learned counsel for the appellant BEST to take instructions, whether to pursue the appeal or withdraw the appeal.

11. Meanwhile on 12 of June 2026, the cross objection was filed. Learned counsel for the appellant BEST today prays on instructions from her client, that the appeal may be permitted to be withdrawn subject to dismissal of cross-objection. Said prayer is accepted, appeal is permitted to be withdrawn since for the reasons stated hereinafter cross-objection is dismissed.

12. Refund of court fees as per Rules. Statutory deposit of Rs.25000/- to be transferred to the concerned tribunal and the parties are at liberty to make an application for refund of the same.

13. Appeal is disposed of as withdrawn.

14. Now, I propose to analyse maintainability of the cross objection on the ground of limitation. The contention of the claimants-respondents is that since notice for final hearing for the first time was listed on 23 June 2026, the cross objection is filed within the period of limitation. The learned counsel for claimants-respondents relied

upon paragraphs 59 and 60 of the decision of the Hon'ble Supreme Court in the case of *Mahadev Govind Gharge & Ors. vs. Special Land Acquisition Officer, Upper Krishna Project Jamkhandi, Karnataka*¹ to contend limitation will begin from notice of final hearing and therefore cross objection is in time.

15. In the cross objection it is stated that the first appeal was admitted on 31 March 2023. This is incorrect. The first appeal was admitted on 18 April 2012 and not on 31 March 2023. I have already observed that the claimants-respondents were represented on 18 April 2012 by an advocate and as per the office noting the advocate for respondent Nos.1 to 3 had filed their *Vakalatnama* even prior to admission. Thereafter, the appeal was listed before Lok Adalat on 12 November 2022, 11 February 2023 and 9 September 2023. In all these three hearings the claimants-respondents were represented by their advocate. Therefore claimants-respondents had full knowledge of appeal atleast from 18 April 2012 and they knew that it will come up for final hearing one day though the exact date was not notified. In my view once appeal is admitted it cannot be gainsaid that because exact date of final hearing was not notified limitation for filing cross objection would not begin.

16. In the cross objection it is stated that the appeal was notified for hearing on 23 June 2026. This is incorrect. The appeal after admission in the year 2012 had come up before Lok Adalat on various occasions and thereafter for hearing on 9 June 2026. Therefore, even this

¹ (2011) 6 Supreme Court Cases 321

averment made in the cross objection is incorrect.

17. As per the records of the court, the claimants-respondents entered their appearance by filing a *Vakalatnama* on 22 February 2012. Thereafter, on 18 April 2012, claimants-respondents appeared at the stage of admission. The contention of learned counsel for claimants-respondents that the limitation would start even in such a case only on service of notice for final hearing cannot be accepted. This has been expressly rejected by the Hon'ble Supreme Court in the very judgment of ***Mahadev Gharge (Supra)*** on which reliance is placed by the counsel for respondents-claimants. The relevant paragraph 36 reads as under:

“36..... It would be a travesty of justice, if after passage of substantial time when the appeal is taken up for final hearing a cross-objector who was heard and participated in the hearing at the admission stage itself, claims that the limitation period for him to file his cross-objection will commence only from the date of service of a fresh notice on him or his pleader, in terms of Order 41 Rule 22 of the Code. Such an interpretation would jeopardise the very purpose and object of the statute and prejudicially affect the administration of justice as the appeal which has come up for final hearing and disposal would again be lost in the bundle of pending cases on this pretext. It is trite that justice must not only be done but must also appear to have been done to all the parties to a lis before the court.”

(emphasis supplied)

18. Once the appeal is admitted in the presence of the claimants-respondents then the next step would be final hearing. Due to pressure of docket for admission and urgent listing, the final hearing dates are not notified but that would not mean that limitation would not start once the claimants-respondents participates at the stage of admission and the appeal gets admitted. Merely because no exact date of final hearing is notified, it would not mean that the limitation

would not begin from the day when the claimants-respondents appeared at the admission stage and was aware of the appeal having been admitted.

19. The issue raised for my consideration had come up before a Larger Bench of this Court in the case of ***Vasant Builders (Developers, Builders and Contractors), Akot and Anr. v/s. Mohan s/o Narayan Patwardhan***² on account of difference of opinion between two learned Single Judge. The issue before the Larger Bench was whether the limitation to file cross objection would start after intimation of filing of the paper book even if the respondent appeared at the stage of the admission. The Larger Bench held that if respondent enters the appearance at the time of the admission then there is no further requirement of giving notice subsequently for any stage of the hearing. The Larger Bench relied upon various decisions including the decision in the case of ***Mahadev Gharge (Supra)*** and paragraph 59 and 60 of said decision. The relevant paragraphs of this judgment which are relevant are as under:

“9. That apart, the provisions of Order XLI of Civil Procedure Code or for that matter Order V of Civil Procedure Code do not contemplate the issuance of notice to the respondent/defendant, at various stages of the proceedings, either in appeal or in the suit. Once the respondent/defendant has entered appearance, either on a caveat, suo motu or upon service of the notice/summons, such appearance stands good for the entire duration of the appeal/suit.

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12. The purpose of issuance of a notice/summons in an appeal or suit, to the respondent/defendant is to make him aware of the pendency of the lis against him/her, and once such knowledge is attributed to the

respondent/defendant, any mode whatsoever, including by his appearance suo motu or on a caveat, it would not be permissible for the respondent/defendant, to claim the entitlement for issuance of any further notice, at any subsequent stage of the lis.

13. The mandate of filing the cross-objection within a period of one month would equally be applicable, where the respondent, has already entered his appearance by filing a caveat or has put in his appearance suo motu, whichever is earlier.

14. A perusal of Rule 3 of Chapter VII of the Appellate Side Rules, 1960, merely postulates that the notice to be issued to the respondent after admission, shall be of a particular duration depending upon the nature of the proceedings. It nowhere postulates, that in spite of a respondent/opponent having put in his appearance, issuance of the notice under Rule 3 is a must. Thus, the question of issuance of notice as contemplated in Rule 3 of Chapter VII of the Appellate Side Rules, 1960 would arise only in a case where the respondent has not put in his appearance, through an Advocate or in person, upon service of notice either at the preadmission stage or is not served when the matter is admitted, and not otherwise. As already observed, the purpose of a notice, being to bring to the knowledge of the respondent the pendency of the lis, against him, the issuance of a notice to him at various stages of the lis is not mandated by law, rather it would make a travesty of the entire process of administration of justice and permit the respondent/opponent to protract the litigation by adopting various tactics of avoiding notice.

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17. In East India Hotels Ltd. vs. Smt. Mahendra Kumari, AIR 2008 Rajasthan 131, while considering the provisions of Order XLI, Rule 22, it has been held as under :-

"10. From the above provisions, it is manifestly clear that the cross-objection has to be filed in the Appellate Court within a period of one month from the date of service on him or his pleader of the notice of the day fixed for hearing of the appeal or even within such further time as the Appellate Court may see fit to allow. A close scrutiny of the procedure of filing of appeal and thereafter proceedings provided under Order 41, Rule 9 of the Code reveals that after proper presentation of the appeal the same is to be posted for admission which may be dismissed at the admission stage and if the same is not dismissed at the stage of admission under Order 41, Rule 11 of the Code then the Appellate Court shall fix the day for hearing of such appeal as provided under Rule 12 of Order 41 of the Code and notice shall be served on the respondent or his pleader to appear and answer. As has been pointed out earlier, the objector-respondent already put his appearance before this Court even before admission of the appeal as a caveator and his counsel was present and participated in proceedings at the

admission stage and in his presence the appeal was admitted, therefore, in my considered view formal notice in writing under the prescribed form under Order 41, Rule 14 of the Code was not essential to be served upon the objector-respondent who participated in the proceedings and was having full knowledge of the admission of the appeal. Similar view has been taken by this Court in Ram Saran Sharma's case (supra) wherein it was observed that when a caveat has already been entered into, service of notice of hearing of the appeal, on the respondent, cannot be taken to be necessary, and the limitation of one month, for filing cross-objection, at the most can be computed from the date of admission of the appeal and not prior to that. In the case of Mutyam Agaiah vs. Special Deputy Collector, (NTPC) L.A. Unit, reported in 2002(2) ALT 715 while taking the similar view it was held as under:

"We have to understand the issue of notices in the proper perspective. The notices are meant for giving knowledge to the other side regarding the judicial proceedings filed by the appellant. It is not every time necessary that the notices should be in writing in the prescribed form. If the knowledge of filing of the appeals can be proved then it is sufficient notice in law. The respondent-cross-objector engaged an Advocate, who filed Vakalatnama and he defended the cause of the claimant in the Original Petition. It means that the cross-objector had sufficient knowledge regarding the appeals. Nothing prevented for the respondent-cross-objector for filing the objections." (emphasis supplied).

18. A Division Bench of this Court in Smt. Krishnabai Rajaram Lonkar vs. Prop. Shri Sanjay Sakharan Kamble, 2018 SCC OnLine Bombay 3915, has held as under :-

"10. Bare reading of Order XLI, Rule 22 of the Civil Procedure Code, 1908 shows limitation for filing cross-objection starts from the date of notice of hearing. Even the Apex Court in the matter of Mahadev Govind Gharge vs. Special Land Acquisition Officer (supra) categorically held that limitation for filing cross-objection will commence from the date of admission if the respondents appeared due to earlier notice. Apart from that, even the authority cited by the advocate for plaintiff also supports the fact that limitation for filing cross-objection starts from the date of admission and or the date of notice of hearing served on the other side. Paragraph 12 of the judgment in the matter of Oil and Natural Gas Corporation vs. Punjsons Pvt. Ltd. (supra) reads thus :

"12. What is relevant in terms of Order 41, Rule 22 read with Rules 12 and 14 is that the respondent should have knowledge about the admission of the appeal for final hearing. Undisputedly it is the practice of the Court when an appeal is heard at the admission stage, normally the Advocate for the respondent, having already notice of the hearing of the matter, waives service on behalf of the respondent and consequent to such waiver the appellant is not required to serve the

respondent afresh with the notice of appeal for the final hearing. Once the Advocate for the respondent waives the service of notice on admission of the appeal, it is always considered as the notice to the respondent for final hearing of the appeal and on such waiver of notice, no further notice is issued to the respondent. The appeal is straightway taken up for final hearing on the board and after hearing the Advocates for the parties, it is disposed of.”

(emphasis supplied)

20. The Larger Bench considered the Bombay High Court Appellate Side Rules in addition to the provisions of the Civil Procedure Code and various decisions of various Court including those of the Hon'ble Supreme Court. In the present case as observed by me above the claimants- respondents entered their appearance much before the admission and participated on the date when the matter was admitted and also thereafter. Therefore, in my view the submission made by learned counsel for the claimants- respondents that the limitation will start from the date of notice of final hearing cannot be accepted, since they had already entered their appearance on 22 February 2012.

21. There is a delay of more than 14 years in filing the cross objection. The limitation begins from the date of admission order i.e. 18 April 2012 and the cross objection having been filed on 12 June 2026 there is delay of 14 years. The averments made with respect to various dates in the cross objection on the date of admission etc., is incorrect as observed by me above. There is no application filed by claimants-respondents for extension of time to file cross objection nor there is any application for condonation of delay in filing the cross objection. Even no submission was made at the time of the hearing with regards to extension of time or condonation of delay before this

court. Therefore, in the absence of any such application for extension of time or for condonation of delay either written or oral, I have no other option, but to dismiss the cross objection having been filed beyond the limitation period provided by Order 41 Rule 22.

22. Cross objection is dismissed in above terms.

23. Appeal is allowed to be withdrawn since cross-objection is dismissed. Interim/Civil Application, if any does not survive.

(JITENDRA JAIN, J)