

in/and C.C.C.A.No.173 of 1994

Date: 31st December, 2014

Between:-

Waheeda Babu (died) per L.Rs. .. Appellants

And

Abdul Jaleel Khan and another .. Respondents

in/and C.C.C.A.No.173 of 1994

COMMON ORDER:-

The suit was originally filed by Waheeda Banu – 1st petitioner/appellant against Abdul Jaleel Khan and Mohd.Khaja – respondents No.1 and 2/defendants.

2. The original plaintiff – Waheeda Banu died. Her two sons (Abdul Khadeer Khan and Abdul Khader Khan) and three daughters (Jameela Banu, Azizia and Sultana Banoo) were impleaded as appellants No.2 to 6. Subsequently, Abdul Khadeer Khan (appellant No.2) died on 10-08-2008; Abdul Khader Khan (appellant No.3) died on 30-07-2006; and Sultana Banoo (appellant No.6) died on 08-05-2008.

3. The 1st respondent/defendant Abdul Jaleel Khan died and no legal representatives were proposed to be impleaded.

4. The 2nd respondent – Mohd.Khaja died on 14-09-2009. Jameela Banu and Azizia – petitioners No.4 and 5/appellants were represented by their Advocate – Sri Venkata Raghu Ramulu, he having originally filed the Vakalat for the two ladies on 18-07-2007, subsequently once again the very same Advocate Venkata Raghu Ramulu has filed a fresh Vakalat for the two ladies Jameela Banu and Azizia on 14-03-2014. The deceased

2nd respondent/defendant was represented by Sri K.Raghuveer Reddy, who has filed the Vakalat on 06-11-1995.

5. In view of the death of the 2nd respondent/defendant, who was represented by Sri K.Raghuveer Reddy, the said Advocate has issued a letter dated 30-10-2010 to Sri K.Venkata RaghuRamulu, Advocate, who was appearing for Jameela Banu and Azizia, informing him about the death of the 2nd respondent- Mohd.Khaja on 14-09-2009 and also informed that he left behind 2 sons by name Md.Jaweed Ahmed and Md.Wajid Ahmed. This letter was received by Sri K.Venkata Raghu Ramulu, Advocate appearing for the petitioners No.4 and 5 on 01-11-2010. This is part of the record, with the acknowledgment of the said Counsel, having received the intimation about the death of respondent No.2 and also informing the names of the legal representatives as long back as on 30-10-2010. The present petition to set aside the abetment and implead Mr.Md.Jaweed Ahmed and Mr.Md.Wajid Ahmed was filed on 28-03-2014 with a delay of 1504 days.

6. In support of the applications, the 5th petitioner – Azizia has filed an affidavit and in view what is mentioned above, it is manifest that the averments made in the affidavit are on the face of it are incorrect. In her affidavit, she mentions as follows in paras 3, 4 and 5:-

“It is submitted that myself and petitioner No.4 are not aware about the proceedings in the present appeal as myself and petitioner No.4 are Pardah Nasheen ladies and we were depending upon our brothers i.e., the petitioners/appellants No.2 and 3 herein. It is submitted that the above referred appal has been filed by Sri Mohd.Azizullah Khan, Advocate on behalf of myself and other petitioners. My elder brother Sri Abdul Khadeer Khan was looking after the court cases. He died on 10-08-2008 due to which myself and my elder sister i.e., petitioner No.4 herein have no knowledge about the court proceedings, pendency of the matter etc. It is submitted that due to the death of my elder brother, myself and petitioner No.3 were not aware about the death of Sri Mohd.Azizullah Khan, Advocate. Later on I came to know about the death of Azizullah Khan, Advocate.

It is further submitted that we came to know through our Advocate Sri Venkat Raghu Ramulu about the pendency of the

matter and about the death of Sri Mohd.Khaja who is respondent No.2 herein. Myself and petitioner No.3 herein further came to know about the death of Sri Mohd.Azizullah Khan, Advocate. It is submitted that in view of the death of the petitioners 1, 2, 3 and 6, myself and petitioner No.4 were not aware about the pendency of the case, etc. It is submitted that due to the communication gap were not aware about the pendency of the case.

Immediately on 27-03-2014, myself and petitioner No.3 herein have approached our Counsel and requested to file L.R. petition to bring the L.Rs., of respondent No.2 on record. Due to the lack of knowledge of the death of the respondent No.2, we could not file the L.R. petition. It is submitted that recently we came to know about the death of the respondent No.2. It is submitted that non-filing of the L.R.petition, abatement petition, condone delay petition is neither intentional nor deliberate. It is submitted that immediately after the knowledge, we approached our Counsel and advised him to file the L.R. Petition, abatement petition and condone delay petition. It is submitted that the respondent No.2 died on 14-09-2009 leaving behind Mohd.Javeed Ahmed and Mohd.Wajid Ahmed.”

7. In view of the fact that the 2 surviving petitioners/appellants were being represented by their Advocate Sri Venkata Raghu Ramulu, who has filed Vakalat on their behalf as long back as on 18-07-2007, the averments in the above paragraphs of the affidavit cannot be believed. It is also not disputed that the appellants Advocate Sri Azizullah Khan died on 05-05-2011 whereas the 2nd respondent died on 14-09-2009 and written intimation has given by R.2's Advocate on 30-10-2010 to the appellant's Counsel on record.

8. On behalf of the proposed respondents, counter is filed opposing the application and setting out all the facts. The learned Counsel appearing for the proposed respondents also relied upon the decisions reported in **M.VARALAKSHMI v. K.MAHADEVA SASTRY (DIED) AND OTHERS** ^[1]; **KATARI SURYANARAYANA AND OTHERS v. KOPPISETTI SUBBA RAO AND OTHERS** ^[2]; and **BALWANT SINGH (DIED) v. JAGDISH SINGH AND OTHERS** ^[3].

9. The law laid down in the decision 3rd supra is to the following

effect:-

“.....Once the legislature has enacted the provisions of Order 22, with particular reference to Rule 9, and the provisions of the Limitation Act are applied to the entertainment of such an application, all these provisions have to be given their true and correct meaning and must be applied wherever called for. If the Court should take a very liberal approach and interpret these provisions in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all these provisions redundant and inoperative. Such approach or interpretation would hardly be permissible in law.

..... The sufficient cause should be such as it would persuade the court, in exercise of its judicial discretion, to treat the delay as an excusable one. The party should show that besides acting bona fide, it has taken all possible steps within its power and control and had approached the court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention.

..... The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of its acting vigilantly.

..... The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflects normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant.

Liberal construction cannot be equated with doing injustice to the other party. Delay should be condoned to do substantial justice without resulting in injustice to the other party. This balance has to be kept in mind by the Court while deciding such applications.”

10. Learned Counsel for the petitioners relied upon the following authorities:-

STATE OF M.P. v. S.S.AKOLKAR ^[4]; RAM NATH SAO ALIAS RAM NATH SAHU AND OTHERS v. GOBARDHAN SAO AND OTHERS ^[5]; GANESHPRASAD BADRINARAYAN LAHOTI v. SANJEEVPRASAD JAMNAPRASAD CHOURASIYA AND ANOTHER ^[6]; BHAG MAL ALIAS RAM BUX AND OTHERS V. MUNSHI (DEAD) NUCLEUS LRs. AND OTHERS ^[7]; PERUMON BHAGVATHY DEVASWOM PERINADU VILLAGE v. BHARGAVI AMMA (DEAD) BY L.Rs. AND OTHERS ^[8]; and STATE OF KARNATAKA v. MOIDEEN KUNHI (DEAD) BY L.Rs. AND OTHERS ^[9].

11. The above authorities, no doubt, lay down that the Courts should adopt a liberal approach in the matter of condonation of delay either it be for restoration or for setting aside the abatement. The facts in the authorities cited are quite distinct. As against the above, in the case in hand, it is clear that the petitioners have been grossly negligent in pursuing their remedy. If such an attitude on the part of a party is to be condone liberally, it amounts to putting premium on the persons who sleep over their rights and at their sweet will woke up and come to the Court seeking the relief of condonation of delay. In the instant case, as has already been noticed, the sole contesting respondent namely Mohd.Khaja died as long back as on 14-09-2009. The written intimation about the death of the sole contesting respondent was furnished to the Counsel of the petitioners on record on 30-10-2010. A copy of the intimation giving the names of the legal representatives of the contesting

respondent were furnished and the Counsel on record for the petitioners acknowledged the same on 01-11-2010. The senior Counsel who was appearing for the petitioners – Sri Azeezullah Khan died on 05-05-2011 as per the information provided by the Bar Association. The application in hand is filed on 28-03-2014. In view of the above circumstances, it is difficult to say that the petitioners are the persons who need to be shown the indulgence of condoning the delay, which, by all means, is abnormal viz., 1504 days. It is not as though that the petitioners or the Counsel on record were not aware of the death of the sole contesting respondent. Merely, because, the petitioners happen to be pardanashin ladies, such abnormal delay cannot be condoned. There are absolutely no merits in the petition (CCCA MP No.216 of 2014) and the same is liable to be dismissed.

12. In the result, C.C.C.A.M.P.No.216 of 2014 is dismissed. Consequently, C.C.C.A.M.P.Nos.217 and 218 of 2014 shall stand rejected. In the circumstances, nothing survives for adjudication in C.C.C.A.No.173 of 1994. Hence, C.C.C.A.No.173 of 1994 is dismissed. No order as to costs.

M.S.K.Jaiswal, J

December, 2014

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HON'BLE SRI JUSTICE M.S.K.JAISWAL

**C.C.C.A.M.P.Nos.216, 217 and 218 of 2014
in C.C.C.A.No.173 of 1994
(Common Order)**

Date: December, 2014

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- [\[1\]](#) 2004 (4) ALD 371 (DB)
 - [\[2\]](#) (2009) 11 SCC 183
 - [\[3\]](#) (2010) 8 SCC 685
 - [\[4\]](#) (1996) 2 SCC 568
 - [\[5\]](#) AIR 2002 SC 1201
 - [\[6\]](#) (2004) 7 SCC 482
 - [\[7\]](#) (2007) 11 SCC 285
 - [\[8\]](#) AIR 2009 SC (Supp) 886
 - [\[9\]](#) AIR 2009 SC 2577