

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.6525 OF 2011 IN
SECOND APPEAL NO.726 OF 2003

NANA FAKIRA TRIBHUWAN, DIED,
THROUGH LR'S AND OTHERS

APPLICANTS

VERSUS

ANNA LAXMAN, DIED, THROUGH LR'S
AND OTHERS

RESPONDENTS

Mr.D.P.Palodkar, Advocate for the applicants.

Mr.H.M.Salve, Advocate for respondent Nos.1(i) to 1(vii).

Mr.S.S.Tope, AGP for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 17/04/2015

PER COURT :

1. By this application, the applicants pray for condonation of 320 days delay caused in filing this application for bringing the legal heirs of the sole appellant on record. The applicants are the legal heirs of the deceased appellant.

2. The circumstances, which have caused the delay in filing this civil application, have been set out in paragraph Nos.2 to 4. Mr.Palodkar, learned Advocate submits that the delay is on account of lack of knowledge and is neither intentional nor deliberate since the applicants derive no advantage in causing the delay. The appeal has

been abated and as such the applicants would lose their last opportunity of approaching this Court.

3. He, therefore, submits that the delay be condoned and the order of abatement be set aside in terms of prayer clause 'B' and 'C' of the application.

4. Mr.Salve, learned Advocate appearing on behalf of the respondents submits that the application deserves to be rejected as the delay is not properly explained. The applicants are misusing the property by taking advantage of the pendency of the second appeal, which has been admitted on 04/06/2008 and substantial questions of law have been framed. He further submits that the applicants are alienating the agricultural land and they need to be restrained till the decision in the second appeal.

5. Mr.Palodkar has taken instructions from his client present in the Court and makes a statement on instructions that the suit property, as it stands today, shall not be alienated.

6. In the light of the above, this application is allowed. Delay of 320 days is condoned subject to costs of Rs.3,500/- (Rs. Three

thousand five hundred only) which shall be deposited in this Court within a period of 3 (three) weeks from today. Costs shall be withdrawn in equal share by the 7 respondents represented by Mr.Salve. The order of abatement stands set aside. The applicants be brought on record in the second appeal within a period of 2 (two) weeks after the ensuing summer vacations.

7. Mr.Palodkar submits that addition of parties on 2 occasions after the institution of the second appeal, requires a properly typed memo of the second appeal to be placed on record. Mr.Salve has no objection. As such, leave to place on record fresh memo of second appeal after compliance of this order.

8. In the event of non compliance of this order, the same shall stand recalled, civil application shall stand rejected and the order of abatement shall stand restored.

(RAVINDRA V. GHUGE, J.)