

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 13144 OF 2010 IN SA/181/2005
WITH
CA (ST) NO.23265 OF 2010 IN SA/181/2005

FAKIRA BABURAO KAPASE DECEASED THROUGH LRS
VERSUS
MAHARASHTRA STATE FARMING CORPORATION LTD.

...
Advocate for Applicants : Shri Ajinkya Deshmukh h/f Shri A.V.Hon
Advocate for Respondents : Shri S.V.Hange h/f Shri V.R.Dhorde

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: March 25, 2015

...
PER COURT :-

1. The applicants, by the first application pray for condonation of 1166 days' delay caused in filing the Civil Application for bringing the legal heirs of the deceased appellant on record. By the second application, they seek to bring the legal heirs of the deceased appellant on record.

2. Reasons in support are explained in paragraph No. 4 of the application.

3. The sole appellant Fakira is said to have been suffering from a serious ailment, was undergoing treatment and finally passed away on 4.2.2007. Delay is neither intentional nor deliberate. The applicants do not gain any advantage by causing the delay.

4. Reliance is placed upon Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107]. The Honourable Apex

Court has, while dealing with the issue of condonation of delay, has observed as under:-

" 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. 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 the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "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 pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. 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."

5. The applicants submit that this Second Appeal is the only remedy available and since Fakira suffered from a peculiar problem (mental disorder), the delay is purely circumstantial and unintentional.

6. Learned Advocate for the respondent / Corporation opposed the

application on the ground that the reasons cited do not support the request for condonation of delay.

7. Having considered the submissions of the rival sides and the peculiar reason mentioned by the applicants, I find that the delay of 1166 days deserves to be condoned so as to enable the applicants to have an opportunity through the Second Appeal.

8. Both the applications are allowed. Delay of 1166 days is condoned, subject to the applicants depositing costs of Rs.10,000/-. Learned Advocate for the respondent / Corporation submits that the said amount be donated to the High Court Advocates' Bar Library, Aurangabad.

9. In the light of the above, the applicants to deposit the said amount with the High Court Advocates' Bar Library, Aurangabad within four weeks from today, failing which this order shall stand recalled, the Civil Application shall stand rejected and the order of abatement, if any, shall stand restored.

10. Upon depositing costs, the order of abatement shall stand vacated and the applicants shall therefore, be brought on record within three weeks from the date of deposit of the costs.

(RAVINDRA V. GHUGE, J.)

...