

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 3456 OF 2012
IN
SECOND APPEAL NO. 1174 OF 2004

Mumtazoddin s/o Shaikh Maheboob – died
through legal representatives ... Applicants

Versus

Mainuddin s/o Shaikh Mahboob – died
through legal heirs and others ... Respondents

Ms. A. N. Ansari, Advocate for applicants
Mr. V. C. Solshe, Advocate for respondents No. 2, 3, 4, 6, 7 and 8

CORAM : SUNIL P. DESHMUKH, J.
11TH DECEMBER, 2015

ORDER:

1. This is an application for condonation of delay of 1250 days in making application for bringing legal heirs of deceased respondent no.9 on record. Respondent no.9 died during pendency of appeal before this court. The applicants explain that they were not aware of death of respondent no.9 and that he was residing in different village. Upon getting knowledge of his death, immediately application has been filed to bring his legal heirs on record and in the process there was an ostensible delay as aforesaid. However, from the date of knowledge, it cannot be said that there is any delay.

2. Mr. Solshe, learned counsel for respondents No. 2, 3, 4, 6, 7 and 8 submits that the reasons given for delay do not appear to be plausible, suit is for partition and separate possession and in the circumstances the reasons given are not palatable.

3. He further submits that the Supreme Court as in *State of Gujarat Vs. Sayed Mohd, AIR 1981 SC 1921*, held that if no cause is shown for condonation of delay, the reason that there may be merit in the case, cannot be sufficient cause.

4. I have heard learned counsel for the parties. It appears that the fact about period of knowledge of death of respondent no.9 by applicants does not appear to have been seriously disputed and also thereafter, immediately movement had been made by making application, and such delay is reasoned out in the application.

5. The citation sought to be relied on may not in strict sense hold the field in the present situation. It is further to be taken into account that it is not disputed that death of respondent No.9 occurred during pendency of appeal before this court and also that deceased was residing in different village. Approach in the matters for condonation of delay is generally required to be liberal and that is how the legal position is being followed for a long time. In view of this, I deem it appropriate to eschew pedantic approach.

6. As such, application stands allowed in terms of prayer clauses (A), (A-1), (B) and (B-1).

7. Notice of second appeal to legal heirs of respondent no.9 be issued returnable on 05-02-2016. Necessary amendments in second appeal be carried out in right earnest.

8. Civil application is disposed of.

SUNIL P. DESHMUKH, J.

pnd