

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

WRIT PETITION NO. 2856 OF 2016

Syed Abdul Wahab S/o Syed Abdullah
Age: 72 yrs, Occu- Business
R/o 6-1-57 Flat no. 1101 and 1102
Mount Nasir Saifabad, Hyderabad
Telangana State.

...PETITIONER
(ori. Respondent No. 2)

versus

1. The State of Maharashtra
through collector, Aurangabad.
2. Syed Murtuza Ali S/o Zahid Ali,
Age-24 yrs, Occu-service,
R/o-Purani Haveli, Hyderabad
Telangana State.
3. Syed Zahid Ali,
Age-47 yrs, occu-Service,
Purani Haveli, Hyderabad
Telangana State
through their GPA holder
Dr. Pramod S/o Eknathrao Jadhav,
Age-52 yrs. Occu- Medical practitioner,
R/o-Khadkeshwar, Aurangabad
tq & Dist. Aurangabad.

...RESPONDENTS

(Respds No. 2 and 3 are
ori. applicants)

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Mr. S.D. Hivrekar, Advocate for petitioner
Mr. U.S. Mote, AGP for respondent No. 1
Mr. Avinash M. Nagarkar, Advocate for respondents No. 2 and 3

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 22nd MARCH, 2016.

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally, with consent.

2. This petition has been moved against order dated 04-02-2016 passed by civil judge, senior division, Aurangabad, by petitioner - respondent No. 2 in miscellaneous civil application No. 310 of 2014 filed by the present respondents No. 2 and 3 – applicants whereunder application for condonation of delay in preferring application for setting aside abatement order dated 03-01-2011 in miscellaneous application requiring judicial inquiry (for short "MARJI") No. 812 of 2002, upon death of Muneerunissa Begum, who died on 14-01-2001, has been allowed.

3. Muneerunissa Begum had filed an application bearing MARJI No. 812 of 2002 for heirship certificate upon death of her mother, namely, Zainab Begum. Present petitioner was original respondent No. 2 in said MARJI. After death of Muneerunissa Begum the court has taken into account that despite chances neither applicants in miscellaneous civil application No. 310 of 2014 present respondents No. 2 and 3 have led any additional evidence nor filed any *pursis* closing their evidence. So, it came to be closed under orders of the Court. From evidence of Dr. Pramod Jadhav, general power of attorney of deceased Muneerunissa Begum, it emerges that, immediately upon death of Muneerunissa Begum, same had been communicated to the present respondents No. 2 and 3. The application had been moved on the ground that there was non communication of abatement order dated 03-01-2011 and that they were residing abroad. Present respondent No. 2 – applicant No. 1 in miscellaneous civil application 310 of 2014 happens to be son of deceased Muneerunissa Begum whereas present respondent No. 3 –

applicant no. 2 is her husband. It has emerged on record that present respondent No. 2 had filed application on 03-01-2011 for permitting to proceed with the matter. So also, it emerges that Dr. Pramod Jadhav has admitted that after demise of Muneerunissa Begum, he had filed an application to keep the proceeding alive in respect of legal heirs of Muneerunissa Begum. The reasons as have been given for the delay about unawareness of the death of Muneerunissa Begum and passing of abatement order do not appear to have sound basis. In fact, in the circumstances, although court has considered all these aspects and also further considered that there are no just and reasonable grounds to condone the delay, yet, the court went on to allow the application, such order can seldom be sustainable in law.

4. Learned counsel for petitioner relies on a decision in the case of *Rajendra Namdeorao Akre Vs. Rajkumar Bhalerao Balbudhe and another* reported in *2016(1) Mh.L.J. 184* wherein it appears to have been considered that sufficient cause/explanation for condonation of delay cannot be dispensed with and costs cannot be a substitute for absence of reasons to condone delay.

5. Having regard to aforesaid, order dated 04-02-2016 in miscellaneous civil application No. 310 of 2014 passed by civil judge, senior division, Aurangabad is untenable and stands set aside.

6. As such, writ petition is allowed in terms of prayer clause "b". Rule is made absolute accordingly.

7. Learned counsel for respondents No. 2 and 3 at this stage makes a request that respondents shall be allowed to file another application for heirship. It is open for the respondents to file such an application as would be available and maintainable in law.

Sd/-

(SUNIL P. DESHMUKH, J.)

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