

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

929 CIVIL APPLICATION NO. 9613 OF 2003
IN CRAFT/24382/2003

SAYAS NARAYANRAO MUNDHE & ORS
VERSUS
ISAK BABAN SHAIKH & ORS

...
Advocate for Applicant : H K Munde

...
CORAM : T.V. NALAWADE, J.
DATED : 23rd June, 2016.

ORDER :

1. Heard the learned counsel for applicants. It appears that notices were issued as against respondents and notices were served to some respondents. Respondent No. 7 is dead and his legal heirs are not brought on the record. Respondent No. 6 is also dead and order is already made that matter is abated as against respondent No. 6. The matter is deemed to be abated as against respondent No. 7.

2. The application is filed for condonation of delay of 1583 days caused in filing Civil Revision Application against the order made by the District Court, Latur in M.C.A. No.132/1994. The said application was filed for condonation of delay of 14 days caused in filing first appeal against the judgment and decree of Regular Civil Suit No. 83/1983, which was pending in

the Court of Civil Judge, Senior Division, Ahmedpur. The suit was filed by present petitioners for relief of removal of encroachment and possession and also for relief of declaration that he is owner of the suit property.

3. The declaratory relief was given by the Trial Court, but the Trial Court dismissed the suit which was filed for removal of encroachment by giving finding that encroachment was not proved. The First Appellate Court has rejected the application by holding that sufficient cause is not shown.

4. Even if the tenability of the revision against the order made by the District Court is kept aside, on merits no relief could have been granted by this Court to the original plaintiffs, present petitioners. The record shows that the Cadestral Surveyor, who had measured the land for plaintiffs was not examined. The judgment delivered also shows that it is not the contention of the plaintiffs that notices of the measurement were served on defendants. Thus, there was virtually no arguable case in the First Appeal to the present petitioners. At the time of considering the application filed for condonation of delay, the Court is expected to consider this point also.

5. In the present matter, the delay of 1583 days is caused. Further, the matter is abated as against many respondents as no steps were taken to bring legal heirs of those respondents on record. In suit, it was contended that all the defendants had jointly made encroachment over the disputed portion. The relief was claimed against all of them jointly. In view of these circumstances, it can be said that the cause of action also does not survive. So, the application is rejected.

[T.V. NALAWADE, J.]

SSC/