

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

CIVIL APPLICATION NO. 8450 OF 2014
IN
CIVIL APPLICATION NO. 3799 OF 2003
IN
CIVIL APPLICATION [STAMP] NO. 14982 OF 2003
IN
SECOND APPEAL NO. 285 of 1990

Vinayak Vasudeorao Kulkarni (dead)
through legal representatives :-

- 1 Smt. Pramilabai w/o Vinayak Kulkarni
(dead) through legal representatives-
applicants no. 2 to 4
- 2 Sau. Ushabai w/o Sharad Kulkarni ..
Age: 63 Years, Occupation: Househld,
R/o. Bhuvada, Savada, Tal. Raver,
District. Jalgaon.
- 3 Sau. Shobha Dilip Kulkarni
Age: 57 Years, Occupation: Househld,
R/o. Rukmini nagar, Gat No. 130, plot no. 6A,
Girna Taki Road, Jalgaon Dist. Jalgaon.
- 4 Sau. Sunanda Subhash Kulkarni
Age: 54 Years, Occupation: Household,
R/o. Sai Nagar, Luis Wadi, Thane
District. Thane.

Applicant no. 2 to 4 through
Power of Attorney Holder:

Jitendra Ramdas Kulkarni
Age: 40 Years, Occupation: Rickshaw Driver,
R/o. Civil Line, Kela Nagar, Near Kela
Godoun, Khamgaon, District: Buldhana ...Applicants

versus

Kashiram Tukaram Patil (dead),
through legal representatives :-

- 1 Shriram Kashiram Patil
Age: 68 Years, Occupation: Agriculturist,
R/o. Palaskheda Budruk,
Taluka-Jamner, District Jalgaon.
 - 2 Bhagwat Kahsiram Patil
Age: 59 Years, Occupation: Agriculturist,
R/o. Plot no. 34, Gat No. 139/3
Sarasvati Nagar, Jamner,
Taluka-Jamner, District Jalgaon.
 - 3 Rajendra Kahsiram Patil
Age: 47 Years, Occupation: service,
R/o. 9, Shiv Nagar, NeAr Asha Nagar,
benind Hari Nagar-2,
Udhana, Surat- 394210 (Gujrat)
 - 4 Sau Anusuyabai Ramesh Patil
Age: 62 Years, Occupation: Household,
R/o. C/o. Ramesh Shivram Patil,
Gorgavle, Taluka chopda,
District Jalgaon.
 - 5 Sau Prabhavati Prakash Mahajan
Age: 56 Years, Occupation: Household,
R/o. C/o. PrakAsh Raghunath Mahajan,
Uttran, Taluka-Erandol, District Jalgaon.
 - 6 Sau. Manglabai Sudhakar Mahajan
Age: 52 Years, Occupation: Household,
R/o. Sudhakar Madhav Mahajan,
Bhusawal roAd, Jamnerpura, Jamner,
Taluka-Jamner, District Jalgaon.
 - 7 Sau. Sumitra Chandrakant Mahajan
Age: 49 Years, Occupation: Household,
R/o. C/o. Chandrakant Ramchandra Mahajan
123, ganesh colony, Jalgaon,
District Jalgaon.
- Respondents

Mr. Sushilkumar H. Tripathi, Advocate for applicants
Mr. A. M. Gholap, Advocate for respondents

CORAM : SUNIL P. DESHMUKH, J.
DATE : 24th November, 2016

ORAL JUDGMENT:

1. Heard learned counsel for the parties.
2. Civil application has been moved for condonation of 2187 days (in fact, 6 years, 28 days) in filing application for setting aside order dated 03-07-2008 of abatement of second appeal passed by this court and consequent order of disposing of second appeal.
3. After hearing the learned counsel, it would be worthwhile to succinctly refer to the background of the application along with incidental aspects.
4. It appears that the second appeal impugns a concurrent decree of the trial and the appellate court granting specific performance of agreement of sale dated 08-02-1974 in respect of a piece of three acres of land situated at Kekat Nimbhora, Tq. Jamner, District Jalgaon for a consideration of Rs.14,000/-.
5. The second appeal had been admitted by this court under order dated 28-08-1990, as would be appearing from the text observing substantial question of law involved is to

the effect that, whether passing of decree of specific performance without proper consideration of provisions of section 20 of the Specific Relief Act,1963 is proper.

6. Subsequently, during the pendency of the second appeal for final hearing, the appellant-original defendant died on 14-10-2002 and a civil application bearing stamp no. 14982 of 2003 had been moved for bringing legal heirs of deceased appellant on record. The same had been moved not only after expiry of period of limitation for bringing legal heirs on record but also after the period of limitation for setting aside abatement had expired. It further appears that the registration of said civil application was refused by the Registrar (Judicial) under order dated 01-10-2003.

7. On 10-10-2003, civil application no. 3799 of 2003 had been lodged under the signature of the advocate for setting aside the order of the Registrar dated 1-10-2003. However, as contended, it appears, no further progress could take place in respect of above and under the circumstances, thereafter, it appears, civil application bearing no. 2494 of 2007 had been moved by respondent-plaintiff for formal order by court about second appeal having been abated. Under the order dated 03-07-2008, the second appeal was dismissed as abated.

8. Thereafter, it appears, in 2011, to be precise on 14-11-2011, decree holder-plaintiff-respondent in second appeal had died. It was on 23-07-2014, present application came to be moved for condonation of 6 years, 28 days' delay in filing application for setting aside the order of abatement dated 03-07-2008 and the order disposing of second appeal, contending that the applicants were not aware and informed about passing of order by Additional Registrar, regarding refusal of registration of application for bringing on record legal heirs of deceased appellant. It is contended that the application for setting aside the Registrar's order and to bring legal heirs on record had been made under the signature of the advocate giving her personal reasons. Applicants were not aware of these developments.

9. It is contended on behalf of the applicants that even the order dated 07-08-2008 had been in the absence of their advocate and had not been informed by the advocate to the applicants. It is sought to be contended that while the progress of the matter was being requested to be informed about to applicants, it was responded to with that the matter is pending final hearing.

10. Another count on which the delay is sought to be accounted for is that all the applicants-legal heirs of the deceased appellant have been women not conversant or acquainted with the procedural compliances required in the matter. The applicants were married daughters of deceased appellant.

11. It has so happened in this matter, while application was filed for setting aside order of this court, by four proposed legal heirs, the first among them, wife of the deceased appellant has also expired and a separate application for bringing her heirs on record is also being lodged.

12. It further appears from the contents of the application that although there had been receipt of summons in respect of regular darkhast for execution of decree in 2012, the applicants were being informed that the second appeal is pending. Ultimately, since it had been difficult for the married daughters of the deceased appellant to prosecute the proceedings, they had appointed power of attorney and said power of attorney had sensed that something has gone awry and got the information from internet and came to know about dismissal of the second appeal. It was, thereafter, no

objection had been taken from the then advocate and the present proceedings have been filed.

13. It is being contended that the applicants were not given proper intimation and that the negligence in prosecution of the proceedings would not be attributable to them.

14. Learned counsel Mr. Tripathi in the circumstances strenuously requests this court to take a liberal approach in the matter and consider the plight of the applicants and, as stated hereinbefore, negligence and improper prosecution of the matter would not be exactly attributable to the applicants and as such prays to condone the delay, set aside the order of abatement and restore the second appeal for hearing on merits.

15. In support of his submissions, Mr. Tripathi places reliance on a decision of the supreme court in *Perumon Bhagvathy Devaswom Perinadu village vs. Bhargavi Amma*, reported in *AIR 2009 SC (Supp) 886* wherein, according to him, the words 'sufficient cause' in section 5 of the Limitation Act, 1963 are to receive liberal construction, so as to advance substantial justice when the delay is not account of dilatory tactics or for want of bona fides, deliberate inaction or negligence on the part of the applicants and that while considering the reasons

for condonation of delay with reference to application for setting aside abatement, the courts can set aside abatement and decide the matter on merits and it is not the length of the delay but, sufficiency of the satisfactory explanation which shall matter.

16. Learned counsel further refers to that the extent of degree of leniency to be shown by court depends upon the nature of application and facts and circumstances of the case. He further refers to that in the present case, it cannot be said that there was no due diligence or that there was inaction on applicants' part since after the application for bringing legal heirs on record had been filed, nothing was required to be done by the applicants and the applicants are not expected to visit the court or their lawyer every day to check whether the contesting respondent is alive or not.

17. In view of the observations as are appearing in aforesaid judgment, learned counsel for applicants submits, guidelines as would emerge from the same would be applicable to the present case and the application may be granted.

18. Whereas, Mr. Gholap, learned counsel appearing on behalf of the respondents with quite some vehemence submits that the judgment being relied on by the applicants at

the time of hearing now would seldom be applicable to the facts and circumstances as are emerging in the present case. The degree of negligence on applicants' side would not let the court to be lenient and liberal in the present matter. He submits that although it is being contended on behalf of the applicants that they were unaware of the progress in the matter, yet for years together since 2003 it does not appear that the applicants had ever reverted to their advocate at any point of time before 2014. Although the lapses, as in the cited judgment on behalf of the applicants, have been considered by the supreme court, observing that regular track of the matter is not expected, yet such an enormous lack in prosecution is not expected in the judgment of the supreme court. He submits that there is no material placed on record by applicants bringing in credibility to their submissions about them being in touch with their advocate from time to time. Save bare statements appearing in the application, no material corroborating the same has been appearing along with the application.

19. Apart from above, he contends that the decree holder himself had died in 2011. It is not even by whisper the case of the applicants in the application for bringing legal heirs of the decree holders on record that they had ever been not aware

of the death of the respondent and as to why the same had not been communicated to their advocate in the second appeal. He further submits that even if for the sake of arguments it is to be accepted that the women applicants had no knowledge about the court procedure, yet the power of attorney given to the person is of the year 2012 and an application has been moved only in 2014. For these lapses, there is no explanation at all, much less any plausible explanation for the same.

20. While the application for condonation of delay for setting aside the order passed by this court in 2007 has been moved in 2014, the cause of action given in the application seeking condonation of delay about that the advocate was giving an understanding to the applicants about pendency of the second appeal, in the facts and circumstances of the cases, emerges to be specious plea and reason. In the face of events as those have occurred even after 2007, in 2011 death of the decree holder had taken place and in the application as has been moved for bringing his heirs, present applicants do not specifically claim that they were unaware of the death of the decree holder or that they became aware of the same only after the power of attorney had been appointed or, for that matter, only after application for setting aside order of this

court of 2007 had been filed. It appears, in fact, the application for bringing legal heirs of deceased decree holder had been simultaneously lodged along with present application.

21. In the circumstances, the reasons as are given in the application seeking condonation of delay in seeking setting aside order of this court have been rendered lame and indiscreet reasons. The events and chronology of order in which those have occurred, such lackadaisical approach by the applicants would not be able to be construed as 'sufficient cause' for the purpose of section 5 of the Limitation Act.

22. In view of aforesaid, it would not be appropriate to give indulgence to the request being made under the application.

23. The application, as such, stands dismissed.

SUNIL P. DESHMUKH,
JUDGE

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