

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

5 APEAL FROM ORDER NO.122 OF 2010

BHAGWAT MAROTI PAPINWAR AND ORS
VERSUS
VISHNUKANT WAMANRAO JAMKAR (DECEASED) LEGAL
REPRESENTATIVES RUKMINIBAI VISHNUKAN

...

Advocate for Petitioners : Mr. Pathan Hamzakhan
I.

Mr. NS Kadrele, Adv. h/for Mr. MM Patil -Beedkar
for Resp.No.1;.

CORAM : P.R.BORA, J.

DATE : 7th December, 2016.

PER COURT :

1) Heard the learned Counsel for the
respective parties.

2) The present appeal is filed against the
order passed by Ad hoc District Judge-1, Kandhar
on 24th June, 2010 in Misc. (RJE) No.39 of 2009.
The aforesaid application was filed by the
appellant seeking condonation of delay, which had
occurred in filing the application for bringing
on record the legal heirs of deceased sole

respondent. It was the contention of the appellant that since he was not aware of the names and addresses of all the legal heirs of deceased respondent, in collecting that information some time was consumed and that was the reason that he could not file the application for bringing on record the legal heirs of deceased respondent within the stipulated period of limitation.

3) The application was opposed by the proposed legal heirs of deceased respondent. It was the contention of the said respondents that the appellant resides just besides the house of the deceased respondent and was quite aware of the names as well as addresses of the legal heirs of the respondent. It was further contended that though one previous application, seeking time for filing the application, was already rejected by this Court on 24th July, 2010, the said order was not challenged by the appellant and on that count also the application was liable to be rejected.

. The learned District Judge, after considering the submissions advanced by the learned Counsel appearing for the parties, rejected the said application. Aggrieved by, the present appeal is filed.

4) Shri Pathan, learned Counsel appearing for the appellant, submitted that the learned District Judge has erroneously rejected the application though sufficient reasons were assigned for occurrence of such delay. The learned Counsel further submitted that earlier application was filed seeking some time for filing the application stating that the addresses of the legal heirs of deceased respondent are to be ascertained.

. The learned Counsel submitted that thereafter subsequent application was preferred for bringing on record the legal heirs since the addresses were ascertained by the appellant and since delay has caused in filing such application, separate application was preferred

for condonation of delay. In the aforesaid circumstances, according to the learned counsel, rejection of first application could not have been a reason for passing the impugned order. The learned Counsel submitted that the inference drawn by the District Court that the appellant was having knowledge of the names and addresses of legal heirs of deceased respondent, is without any evidence there for. The learned Counsel, therefore, prayed for setting aside the impugned order and to allow the application for condonation of delay.

5) The learned Counsel appearing for the respondents has supported the impugned order. The learned Counsel submitted that the reasons assigned by the learned Judge for rejecting the application are just and proper and no interference is required in the impugned order. In the alternative, the learned Counsel submitted that if this Court reaches to the conclusion that the delay is liable to be condoned, adequate

costs may be saddled on the appellant.

6) After having considered the submissions advanced by the learned counsel for the parties and on perusal of the impugned order, it appears to me that the application filed by the present appellant seeking condonation of delay, has been rejected on some technical grounds. It has to be borne in mind that the matters are to be decided on merits. Moreover, the inference drawn by the first appellate court that the appellant was aware of the names and addresses of legal heirs of deceased respondent also cannot be sustained as there is no contrary evidence there for. Merely because the appellant resides just next door to the respondent, it cannot be presumed that postal addresses would be within the knowledge of the appellant. Further, the delay is also not of a huge period so that same could not have been condoned. In the circumstances, I am inclined to allow the present appeal and consequently to set aside the impugned order, of

course, by imposing adequate costs on the appellant.

7) In the result, the impugned order is quashed and set aside. Consequently, the Misc. (RJE) No.39 of 2009 stands allowed subject to payment of costs of Rs.1,000/- by the appellant to the Respondents.

(P.R.BORA)
JUDGE

bdv/