

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

CIVIL APPLICATION NO. 1962 OF 2015
IN SAST/27595/2014 WITH CA/1963/2015 IN SAST/27595/2014

LAXMAN KRISHNA DESHMUKH DIED LRS URMILA AND
OTHERS
VERSUS
BABRUWAN SOPANRAO DESHMUKH AND ANOTHER

Advocate for Applicants : Mr.Nitin N. Jagadale h/f Salunke V.D.
Advocate for Respondents : Devakate Anant R For R.nos.1 &2

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CORAM : SUNIL P. DESHMUKH,J.

DATED : 29TH JANUARY,2016

PER COURT :-

Heard learned counsel for the parties. Learned counsel for the applicant submits that defendant no.1 is deceased appellant no.1 who was looking after affairs of litigation and had been prosecuting the matter. However, after filing appeal, deceased appellant no.1 himself who was prosecuting case had been suffering from serious illness. He supports said submission with the certificate annexed alongwith application. He submits that all the other appellants were depending upon deceased appellant no.1 in respect of conduct of the case while the matter was going on before the trial Court and while

appeal had been filed in District Court. It is therefore, submitted that it is by sheer accident that the applicants came to know about the decision in Regular Civil Appeal rendered in April, 2011 and thereafter they have immediately moved for filing Second Appeal in the District Court. There is delay of three years and some odd days. It is submitted on behalf of applicants that delay is neither intentional or deliberate. Suit had been instituted for declaration and injunction which had been dismissed by Court at first instance and appellate Court has reversed and allowed the matter. In these circumstances, no benefit was going to be gained by applicants by causing delay. He submits that the matter be considered sympathetically and having regard to the various decisions of the High Court and Supreme Court.

2] Learned counsel Mr.Devkate however submits that no importance can be given to the certificate given with application which has been obtained from Latur district while appellant no.1 died in Saswad. He was residing originally in Osmanabad district. In view of these circumstances, there is no propriety in getting certificate from Latur District. He therefore, suspects the genuineness of the same. Learned counsel further submits that there were other appellants who could have conducted the matter and in fact it cannot be said that they were not aware of the decision in April, 2011. He

submits that all the appellants are supposed to have knowledge since they were prosecuting the matter in District Court. He therefore, requests to reject the application for condonation of delay.

3] Although Mr.Devkate opposed the application, the sufferings before death by appellant no,1 is not seriously disputed. It is submitted that he is not in a position to test its veracity. It is further to be considered that it is case of the applicant that the matter has been prosecuted by deceased appellant no.1. Different point of time of knowledge by other appellants than the one contended by appellants could not be brought by the contesting respondents, when the dispute had been with regard to the averments in the application in respect of point of time of knowledge. It is further required to be considered that literacy levels of the parties are not high. In these circumstances, I deem that to condone the delay would sub serve the cause of justice. Inconvenience if any caused to the respondents can be made good by awarding suitable costs to the applicants. Having regard to the avocation and occupation of the parties, I deem Rs.5000/- to be appropriate costs to be paid to the respondents for condonation of delay. In view of the same Civil Application stands allowed in terms of prayer clause "B" on condition that the applicants shall deposit sum of Rs.5000/- in this Court within six weeks from today. On such deposit being made, respondents are at liberty to

withdraw the same. Civil Applications accordingly stand disposed of.

(SUNIL P. DESHMUKH,J.)

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