

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 16991 OF 2015
IN
WRIT PETITION NO. 8322 OF 2015

Gajanan Devidas Sonawane
died through LRS

Vijaya Gajanan Sonwane and ors. ... Applicants

Vs.

Gangabai Shivdas patil and Ors. ... Respondents

Mr. Wagh, Advocate h/f. Mr. A.V. Hon, Advocate for the applicants.
Mr. P.B. Patil, Advocate for respondents no. 6A to 6C.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 29-07-2016.

Per Court :

1. Heard learned counsel for the parties.
2. Learned counsel for the applicants, Mr. Wagh draws attention to that, while notices of the writ petition went from this court, report is received back with an endorsement that respondent no.6 is no more and he has died in 2012. Accordingly, this civil application has been filed for bringing legal heirs of deceased respondent no.6 on record. Learned counsel submits, as such, there is delay of 3 years and 122 days in filing application for bringing legal heirs of deceased respondent on record. He submits that applicants are agriculturists and are not accustomed to the procedure and prosecution of legal proceedings and have to rely on information as would be received and given in respect of the same.

He submits delay occurred is under unawareness of procedure and its implications. It is neither intentional nor deliberate. The same is for want of proper knowledge, no benefit is at all derived from causing delay.

3. Learned counsel Mr. P.B. Patil, however, stiffly contests and resists the application. He submits that, writ petition is arising out of order passed in Regular Civil Appeal No. 107 of 2009 pending before District Court and in the absence of legal heirs being brought on record of deceased respondent no.6 in said regular civil appeal to bring his legal heirs on record in writ petition preferred against interlocutory order would seldom be sustainable. He submits that, even the reason given under the civil application for condonation of delay about applicants realising about the death upon the report of notice having received back, is apart from factual position as would emerge. It is a plea having no substance and veracity and is a run away plea being made casually. He submits that, deceased respondent no.6 is a cousin of applicants. It is indeed not correct and it is even difficult to believe that they were not aware of his death. It is submitted that, the distance between the places of residence of applicants and that of deceased person is not much and the applicants own some land in village wherein respondent no.6 had been residing. Even quite a few applicants have attended his funeral. As such, there are sufficient circumstances indicating that the applicants had knowledge of death of respondent no.6.

4. Learned counsel further draws attention to that even the certificate which has been annexed to the application is of 2012, which indicates they possessed the death certificate since then. Learned counsel states that, the applicant are habitually negligent and casually go on making incorrect statements. Learned counsel purports to advert to yet another litigation pending in regular civil suit no. 258 of 2010 instituted by the applicants wherein deceased respondent no.6 was a party defendant and further that in said proceedings after death of respondent no.6, his legal heirs were brought on record immediately. He further submits that, the delay in the circumstances is inordinate and does not deserve any leniency and/or indulgence.

5. After hearing the learned counsel for the parties the position appears to be that, the applicants had not been properly apprised of legal requirements and implications and the applicants appear to be oblivious of that action for bringing legal heirs of deceased respondent no.6 would be required immediately to be taken. It appears that, it was upon the report of notice having received, they were given to understand that an action for bringing legal heirs of respondent no.6 would be required.

6. In the circumstances, it emerges that, the petitioners had not realised the procedural compliances required in the present litigation. Be that as it may, it is not a case that the lapse in

following proper procedure has been deliberate or for that matter intentional nor it is the case that the petitioners have derived any special benefit under the same. In fact petitioners appear to be unaware about the implications that would follow and of that it would be detrimental.

7. In view of aforesaid, I am inclined to take a lenient view that would further the cause of the main litigation rather than getting entangled into the technical procedural compliances. However, in the process, the inconvenience being caused to the respondents will have to be suitably compensated in pecuniary terms. As such the civil application is allowed in terms of prayer clauses "A" and "B" subject to payment of cost of Rs. 10,000/-. The cost be deposited in this court within a period of six weeks. Payment of cost is a condition precedent. In case of failure to pay cost, the application shall be deemed to have been dismissed without further reference to the court. Interim relief, to continue for a period of two weeks, in case the costs are paid the same will continue further.

(SUNIL P. DESHMUKH)
JUDGE

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