

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**CIVIL APPLICATION NO. 1446 OF 2016
IN
WRIT PETITION NO. 3480 OF 1998**

Narayan Laxman Laigude,
Since deceased through his
Legal Heir Dilip Narayan Laigude
Since deceased through his
Legal heirs Sangita Dilip Laigude & Ors. ... Applicants
V/s.

Rakhamabai Ramchandra Pawar
Since deceased through her legal heirs
Tapaswini Parwatibai Guru Shrikrishna
Baba Shewalikar, since deceased
Through her legal heir Vitthal Babanrao Bhogade
since deceased through his legal heirs
Sulochana Vitthal Bhogade & Ors. ... Respondents

Mr. R. N. Sanghavi for the Applicants.
Mr. Sanjeev Rairkar with Nikhil Vidhwans for the Respondents.

**CORAM : K. K. TATED, J.
DATED : 03/10/2016**

PC.:

. Heard learned Counsel for the parties.

2 This application is for bringing legal heirs on record of sole petitioner Mr. Dilip Narayan Laigude, who died during the pendency of the present Writ Petition.

3 There is delay on the part of applicant to prefer the present Civil Application. In support of this Civil Application, the learned counsel

for the applicant filed additional affidavit dated 23.09.2016 duly affirmed by Mr. Azad Dilip Laigude.

4 The learned counsel for the applicant submits that the present Writ Petition was filed by original petitioner Mr. Dilip Narayan Laigude on 08.07.1998. Same was admitted by this Court on 15.07.1998 and granted ad-interim relief in terms of prayer clause (c). Since, then matter is pending for hearing and final disposal on its own merits. He submits that some time in the month of May, 2016, the office of the applicant's Advocate called upon the petitioner for instructions if matter come for final hearing. At that time, the applicant Azad Dilip Laigude attended Advocate's office and informed the Advocate that his father expired on 25.03.2013. At that time, the Advocate explained the applicants that they have to bring on record all the legal heirs of his father within stipulated time i.e. 90 days. He submits that as soon as the applicants learnt this fact, immediately he obtained the death certificate from Pune Municipal Corporation and has given instructions to the Advocate for filing application for bringing them on record. The applicant filed present civil application on 09.06.2016.

5 The learned counsel for the applicant submits that for want of knowledge, it remained on part of applicant to take immediate steps for filing present Civil Application. He submits that when the Writ Petition was filed in the year 1998, at that time the applicant Mr. Azad was 7 years old and his sister was 9-10 years old. He submits that applicants' father never informed any family members about the pendency of the present litigation before this court. Hence, they had no knowledge. They learnt about the pendency of the litigation when they received

letter from the office of the advocate in the month of May, 2016. Hence, there is delay on the part of applicants to prefer application within stipulated time. He submits that the applicants have good chance of success in the present matter. He submits that if delay is not condoned, irreparable loss will be caused to the applicants. Hence, Civil Application may be allowed and they may be allowed to contest Writ Petition No. 3480 of 1998 on its own merits.

6 On the other hand, the learned counsel for the Respondents vehemently opposed the present Civil Application. He submits that there is delay of more than 4 years 2 months and 15 days in filing Civil Application. He submits that delay is not sufficiently explained by the applicants. He submits that in the present application, the son of the deceased filed his affidavit. He submits that the widow of deceased failed to file any affidavit disclosing about the knowledge of the present litigation. He submits that though the applicants in Civil Application stated that they learnt about the present litigation, only when they received letter from office of their advocate, they failed and neglected to place on record the copy of the said letter. He submits that the Respondents filed their Affidavit-in-Reply dated 28.09.2016 disputing the reasons disclosed by the applicants in causing the delay in filing the Civil Application. He submits that applicants failed to show the sufficient cause for condonation of inordinate days delay. In support of his contentions, he relied on the Judgment of the Apex Court in the matters of *K. Rudrappa V/s. Shivappa, reported in (2004) 12 Supreme Court Cases 253*, *Katari Suryanarayana & Ors. Vs, Koppiseti Subba Rao & Ors. Reported in (2009)11 Supreme Court*

Cases 183, Balwant Singh (Dead) V/s. Jagdish Singh & Ors., reported in (2010) 8 Supreme Court Cases 685. He submits that in all these authorities, the Apex Court specifically held that it is the duty of the applicant to place on record the material to justify his case. He submits that in the case in hand, the applicants failed to place on record the copy of letter of his Advocate to show the date of knowledge about the pendency of the present litigation. On the basis of these submissions and law declared by the Apex Court, the learned counsel for the respondents submits that there is no substance in the present Civil Application and same to be dismissed with costs.

7 I heard both the sides at length. It is to be noted that in the present proceeding, Writ Petition No. 3480 of 1998 was filed by Late Dilip N. Laigude in the year 1998. At that time, Mr. Azad, the son of deceased was of 7 years old and Amrita, the daughter of deceased was 9-10 years old. They specifically stated on solemn affirmation that first time in the month of May, 2016, they learnt about the pendency of the present proceeding in this court, when they received the letter from Advocate on record. As soon as, they received the letter, they immediately contacted to their Advocate and filed the present Civil Application. For want of knowledge, it remained on their part to take appropriate steps for bringing legal heirs on record immediately. During the lifetime, the deceased D. N. Laigude never disclosed about the present litigation, to them.

8 It is to be noted that the Apex Court in the matter of *N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123* held that the

object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to

think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

9 The authorities cited by the learned counsel for the Respondent also shows that if the sufficient cause is shown by the Applicant, then Court can consider the application for condonation of delay for bringing legal heirs on record.

10 In the case in hand, it is the specific case of the applicants that they learnt about the pendency of the present litigation only in the month of May, 2016. Hence, the Authorities cited by the Respondents are applicable to the facts and circumstances of the present case to condone the delay. In view of this fact, I am satisfied that applicants have made out case for allowing this civil application.

11 Hence, following order is passed:

- a) Delay in preferring the civil application is condoned.
- b) Abatement is set aside.
- c) Applicant is allowed to bring legal heirs on record.
- d) Applicants to carry out amendment within six weeks from today, failing which the civil application shall stand dismissed, without further reference to the court.
- e) If amendment is carried out within stipulated time as stated hereinabove, applicants to serve the amended copy of petition on

Respondent or their Advocate immediately thereafter.

f) Applicants to pay cost of Rs.2,500/- to the Respondents or their Advocate or deposit in the Registry of this Court within three weeks from today, failing which the civil application shall stand dismissed, without further reference to the court.

g) If cost is deposited in registry, respondent is entitled to withdraw the same without any condition.

h) Civil application stands disposed off accordingly.

(K.K.TATED, J.)