

(1)

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

**CIVIL APPLICATION NO. 4640 OF 2015
IN/WITH
CIVIL REVISION APPLICATION (ST) NO. 11243 OF 2015**

Vishal s/o Uttamrao Deshmukh,
Age: 38 years, Occ: Agri.,
& Business, R/o. Pathak Galli,
Parali Vaijnath, Taluka Parali
Vaijnath, District Beed.

..APPLICANT

VERSUS

1. Shivali alias Mangal w/o
Chandrakant Deshmukh,
Age: 57 years, Occ: Household,
R/o. Ramteerth, Tal. Daryapur,
Dist. Amravati.

2. Shanta w/o Tukaram Deshmukh,
Age: 50 years, Occ: Household,
R/o. Masrathnagar, Jalna Road,
Beed, Taluka & Dist. Beed.

..RESPONDENTS

Mr R.S. Deshmukh, Advocate for applicant;
Mr Manish P. Tripathi, Advocate h/f Mr N.B.
Khandare, Advocate for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 31st JULY, 2017

ORAL ORDER :

The delay caused in preferring the civil
revision application, since not objected, stands

(2)

condoned.

2. The respondents are legal heirs of deceased Narhari, who died at Parli on 27th August, 2011. Misc. Application No. 3 of 2012 was preferred by the applicant claiming right to administer the property of deceased Narhari, under the provisions of Bombay Regulation (VIII) of 1827.

3. The said proceedings were answered in favour of the present applicant, which respondents have questioned in the appeal being Regular Civil Appeal No. 51 of 2014, wherein there was delay, which prompted the respondents to move application being Misc. Application No. 8 of 2013. Learned District Judge-3, Ambajogai, condoned the delay on the ground that one of the applicant to the said application, who is resident of Amravati was not appropriately put to the notice or it was not within knowledge of respondent No.1 herein, who is resident of Amravati about initiation of proceedings. The cause cited was, the newspaper

(3)

'Jagmitra' has no circulation in Amravati.

4. It is this order of condonation of delay, which is questioned in the present application.

5. Mr. Deshmukh, learned Counsel for the applicant would urge that learned lower appellate Court ignored two issues; (a) that one of the applicant namely Shanta w/o Tukaram Deshmukh is resident of district Beed and was aware about proceedings in question and (b) it has to be inferred that through Shanta w/o Tukaram Deshmukh, other applicant, who is resident of Amravati must have been informed about proceedings in question. He would then urge that the delay is condoned without considering the sufficient cause. As such, present application needs to be allowed.

6. The claim is opposed by learned Counsel for the respondents-original applicants. According to them, once the lower appellate Court exercised discretion, this Court should not interfere in the

(4)

revisional jurisdiction. According to them, in appeal, the present applicant will get appropriate chance to defend his case.

7. Considered the rival submissions. In my opinion, the order of condonation of delay does not call for any interference in the revisional jurisdiction but for awarding cost of Rs.2000/- to be paid by the respondents to the applicant in pending appeal within a period of six weeks from today. Upon analyzing submissions of the applicant, I hardly notice any excessive exercise of jurisdiction of lower appellate Court. No case for interference is made out in the discretion exercised by the lower appellate Court. Civil Revision Application, as such, fails and stands rejected, with above observations.

(N.W. SAMBRE, J.)

Tupe