IN THE HIGH COURT OF JUDICATURE
AT BOMBAY

BENCH AT AURANGABAD.

CIVIL APPLICATION NO.8719 OF 2015
IN
SECOND APPEAL NO.511 OF 1991.

Laxman S/o Hiraman Chavan
and others. ...Applicants.

Versus

Rama S/o Bala Chavan
and others. ...Respondents.

...

Mrs.C.S.Deshmukh, advocate for the Applicants.
Mr.G.K.Thigle, advocate for Respondent Nos.2 to 5.

...

CORAM : N.W.SAMBRE,J.

Date : 27.07.2017.

PER COURT :

1. Heard.

2. This application is for bringing L.Rs. of Respondent No.1 i.e. defendant No.1 on record, for setting aside abatement and for condonation of delay of 6756 days.

3. Perused the application. The cause title in the application is that appellant No.2 died on 3.5.2011, who was looking after the present matter. It is further prayed that in 1992, the appeal came to be admitted and there remained communication gap in between the lawyer and a litigant which appears to be a cause cited for condonation of delay, setting aside abatement and delay in bringing L.Rs. on record. During the course of arguments, the learned counsel for the applicant has relied upon the judgment of Apex Court in the matter of **"Perumon Bhagvathy Devaswom,Perinadu Vs. Bhargavi Amma (Dead) by L.Rs. and others"** reported in **(2008) 8 Supreme Court Cases 321,** so as to submit that the delay in bringing L.Rs. is required to be considered liberally and Court should not have strict of approach in considering the cause cited in prayer for condonation of delay. In addition to above, support is also drawn from the Division Bench judgment of this Court in the matter of **"Keshao S/o Kawadu Maral and another Vs. State of Maharashtra and others"** reported in **2005 (1) Mh.L.J.1059.**

4. Per contra, Mr.Thigle, learned counsel for respondent original defendant would urge that the delay is of more than 17 years. The death of defendant No.1 is prior to 17 years and both the parties i.e. plaintiffs and defendants are closely related, residing in the same village and as such it can not be inferred that the applicant had no knowledge about death of defendant No.1. He would then urge that may be the length of delay is not a cause to be considered but in view of the judgment of the Apex Court in the matter of **"Balwant Singh (Dead) Vs. Jagdish Singh and others"** reported in **(2010) 8 Supreme Court Cases 685** and **"Katari Suryanarayana and others Vs. Koppisetti Subba Rao and others"** reported in **(2009) 11 Supreme Court Cases 183,** the Court must view the conduct of the party, particularly, while citing the cause for delay condonation seriously. According to him, the application lacks convincing grounds and the conduct of the appellant-applicant is also not supporting the bona fide cause, as such sought dismissal of the application.

5. The present appeal came to be admitted on 7.2.1992. Thereafter, this Court ordered court notices on 6.7.2009 as it appears that appellant has not taken steps for his appearance before the Court.

6. The matter thereafter appeared time and again before this Court. The respondent No.1 was reported to be dead as per bailiff report as reflected in farad sheet dated March 5, 2010. Respondent No.1 i.e. Defendant No.1 is reported to died on 20.10.1996.

7. Again thereafter, the appellant had not taken any steps in the matter, as such the matter appeared before the Court time and again which prompted this Court to issue notice to the appellant as nobody appeared for them.

8. On 6.8.2012, this Court ordered abatement of appeal against the appellant No.2 who died on 3.5.2011. Thereafter matter appeared before the Court time and again and was required to be adjourned for the reason that

appellant Nos.1 and 2 so also respondent No.1 was reported to be dead and no steps were taken.

9. Some time in July 2015, applications came to be filed by the appellant for bringing L.Rs. of appellant Nos.1 and 2 so also for bringing L.Rs. of the respondent No.1 on record.

10. In all these three applications, two main reasons are cited for delay (i) the appellant No.2 was looking after the litigation and rest of the appellants were not aware of the same; (ii) there remained communication gap between the lawyer and the appellant.

11. If the contents in the application are analysed in view of the law laid down by the Apex Court in the matter of **"Balwant Singh (Dead) Vs. Jagdish Singh and others"** cited supra, particularly para 37 and 38 which reads thus :

> *"37. We feel that it would be useful to make a reference to the judgment of this Court in Perumon*

Bhagvathy Devaswom. In this case, the Court, after discussing a number of judgments of this Court as well as that of the High Courts, enunciated the principles which need to be kept in mind while dealing with applications filed under the provisions of Order 22 CPC along with an application under Section 5 of the Limitation Act for condonation of delay in filing the application for bringing the legal representatives on record. In SCC para 13 of the judgment, the Court held as under : (SCC pp.329-30)

"(i) The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in Section 5 of the Limitation Act should receive a liberal construction

so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.

(v) Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted

by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal."

We may also notice here that this judgment had been followed with approval by an equi-Bench of this Court in Katari Suryanarayana.

38. Above are the principles which should control the exercise of judicial discretion vested in the court under these provisions. The explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the court. In addition to this,, the court must also take into

account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and application belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. The larger Benches as well as equi-Benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. Thus, it is the requirement of law that these applications can not be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the court would be inclined

to condone the delay in the filing of such applications."

In the backdrop of above observations of Supreme Court if the case of the applicant is considered following inference can be drawn :

(a) Appellant and respondents who are closely related and residing in the same village were very much aware about the pendency of the proceedings and date of death of appellant No.1 and 2 so also respondent No.1;

(b) The Court notices were issued time and again to the appellant and the appellant remained silent on the same;

(c) It is only in 2015, for the reasons best known, the appellant has come out with a case seeking condonation of delay of 6756 days i.e. about 18 years;

(d) The matter appeared before the Court time and again and was required to be adjourned for failure of the appellant to take steps in the matter;

12. The aforesaid cause cited squarely fits into the requirement of para 37 and 38 of the judgment of the Apex Court in the matter of **"Balwant Singh (Dead) Vs. Jagdish Singh and others"** cited supra.

13. I hardly see any convincing reason for ordering condonation of delay, setting aside abatement and bringing L.Rs. of respondent No.1 on record as conduct of the appellant does not appear to be bona fide. The inordinate delay of 18 years is not explained. As such the application fails, stands rejected.

14. As the Appeal stands abated against Respondent No.2, same stands dismissed against him.

(N.W.SAMBRE,J.)

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