

(1)

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

**CIVIL APPLICATION NO.10828 OF 2017
IN/WITH
WRIT PETITION NO.1095 OF 1998
WITH
CIVIL APPLICATION NO.10829 OF 2017
IN/WITH
WRIT PETITION NO.1096 OF 1998**

1. Vasant Shankar Boravake,
Deceased thr. L.Rs.
 - 1-a. Nalini w/o Vasant Boravake,
Age: 90 years, Occu: Household,
R/o at post Karwadi,
Tq. Kopargaon, Dist. Ahmednagar
 - 1-b. Romesh s/o Shrikant Boravake,
Age: 36 years, Occu: Agri.,
R/o as above
 - 1-c. Pritam s/o Chandrakant Boravake,
Age: 46 years, Occu: Business,
R/o J/6, Dhanraj Apartment,
1224, Apte Road, Pune-411 004,
District Pune
- ..APPLICANTS

VERSUS

1. Manikrao Jayawantrao Rajebhosale,
Age: Major, Occu: Agri.
2. Shashikant Shivram Boravake,
Age: Major, Occu: Agri.
3. Sudhakar Shivram Boravake,
Age: Major, Occu: Agri.
4. Hemant Shivram Boravake,
Age: Major, Occu: Agri.
5. Janardan Shivram Boravake,
Age: Major, Occu: Agri.
6. Dnyaneshwar Shivram Boravake,
Age: Major, Occu: Agri.

(2)

7. Shankar Shivram Boravake,
Age: Major, Occu: Agri.
8. Rajiv Shivram Boravake,
Age: Major, Occu: Agri.
9. Sanju Shivram Boravake,
Age: Major, Occu: Agri.
10. Smt. Shantabai Shivram Boravake,
Age: Major, Occu: Agri.
11. Smt. Sulochana Shivram Boravake,
Age: Major, Occu: Agri.,
1 to 11 all R/o Manjur,
Tq. Kopargaon, Dist. Ahmednagar ..RESPONDENTS

**WITH
CIVIL APPLICATION NO.11329 OF 2017
IN/WITH
WRIT PETITION NO.1091 OF 1998**

1. Shankar Shivram Boravake,
Age: Major Occu: Agriculture
2. Rajiv Shivram Boravake,
Age: Major, Occu: Agriculture
3. Sanjeev Shivaram Boravake,
Age: 60 years, Occu: Agriculture,

All R/o Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar ..APPLICANTS

VERSUS

1. Manikrao s/o Javantrao Rajebhosale
2. Shashikant Shivram Boravake
3. Sudhakar Sivram Boravake
4. Hemand Shiram Boravake
5. Janardan Shivram Boravake
6. Dnyaneshwar Shivram Boravake

(3)

7. Smt. Sulochana Sivram Boravake
8. Vasant Shankar Boravake,
(deceased, thr. L.Rs.)
- 8-a. Nalini wd/o Vasant Boravake,
Age: 90 years, Occu: Household,
R/o at post Karwadi,
Tq. Kopargaon, Dist. Ahmednagar
- 8-b. Romesh s/o Shrikant Boravake,
Age: 30 years, Occu: Agri.,
R/o at post Karwadi,
Tq. Kopargaon, Dist. Ahmednagar
- 8-c. Pritam s/o Chandrakant Boravake,
Age: 46 years, Occu: Business,
R/o J/6, Dhanraj Apartment,
1224, Apte Road, Pune-411 004,
District Pune

Respondents 1 to 7 are
all aged : Major, Occu: Agriculture,
R/o Manjur, Tq. Kopargaon,
Dist. Ahmednagar

..RESPONDENTS

Mr Sanket S. Kulkarni, Advocate for applicants;
Mr R. N. Dhorde, Senior Advocate for respondent No.1;
Mr P. S. Pawar, Advocate for respondent Nos.2 to 10 in
C.A.Nos.11828/2017 & 11829/2017 and for respondent Nos.2 to 7

CORAM : NITIN W. SAMBRE, J.

DATE : 15th September, 2017

ORAL ORDER:

In these three petitions, the petitioner expired on 7th November, 2002. Since no steps were taken for bringing his legal representatives on record, the respondents-land owners filed an affidavit on 8th August, 2017 stating that the petitions stood abated. Subsequent thereto, the present applicants filed these applications for bringing them as legal

(4)

representatives of deceased petitioner on record, condonation of delay and setting aside abatement, if any. The Registry has notified that there is delay of about 14 years and odd months caused in taking steps for bringing legal representatives of deceased petitioner on record.

2. While justifying the delay and seeking permission to bring legal representatives of petitioner on record by setting aside abatement, if any, Mr Kulkarni, learned Counsel appearing on behalf of the applicants would invite attention of this Court to following factual matrix. According to him, Shrikant and Chandrakant, sons of the deceased petitioner, predeceased him in 1994 and 2002, respectively. He would then urge that some of the applicants i.e. legal representatives of the original petitioner were minor when the suit came to be filed. He would, as such, urge that there was hardly any occasion for the legal representatives to have knowledge about pendency of the suit, legal representatives to be brought on record and abatement of the same. In addition, he would rely upon the judgment of the Apex Court, in the matter of **Ram Nath Sao @ Ram Nath Sahu and ors. vs. Gobardhan Sao and ors.**, reported in **AIR 2002 SC 1201**. It is also urged that the rustic villagers or illiterate parties like the applicants cannot be expected to be cautious and diligent about their rights in legal proceedings and also about the legal requirement i.e. limitation within which the steps are to be taken for bringing legal representatives on record by drawing support from the order passed on Writ Petition No.4553 of 1996.

(5)

3. Per contra, Mr Dhorde, learned Senior Counsel appearing on behalf of respondent no.1 – land owner would urge that the applications are moved after delay of 14 years, which is not explained, much less satisfactorily. According to him, though it is not expected that day to day delay is to be explained by the applicants, still he would urge that delay of 14 years and odd months being enormous cannot be condoned merely for asking, in absence of any cause. He would draw support from the judgment of the Apex Court in the matter of **Balwant Singh (Dead) vs. Jagdish Singh & ors.**, reported in **2010 (6) MR 480 (S.C.)**, so as to submit that there is a valuable right accrued in favour of the respondents, as a result of failure of the present applicants to bring them on record as legal representatives for last about 15 years and in such eventuality, huge delay, merely for asking, cannot be condoned. He would then urge that the applications lack entire details, the delay is not bona fide explained and as such, the applications be rejected.

4. Considered the rival submissions.

5. It could be inferred from the record that the respondents filed an affidavit bringing to the notice of the Court that the petitioner has expired on 7th November, 2002. It is only thereafter, the legal representatives of deceased petitioner have moved present applications seeking condonation of delay, setting aside abatement and permission to bring legal representatives on record.

(6)

6. It is then to be noted that even on the date of filing of the petitions, the present applicants were major and it cannot be borne out of the record that they are illiterate. It is then to be noted that the affidavit is sworn by applicant Ramesh, who has put his signature in English and further supported the affidavit, contents of which are drafted in English, which he claims to have understood in the same language. It is then noted from the record that the sons of deceased petitioner predeceased him and as such the issue as regards the sons of the petitioner had already expired will hardly be of any assistance, particularly for the purpose of seeking condonation of delay of 14 years and odd months.

7. As it is borne out from record that when the petitions were filed, all legal representatives of the petitioner were major, their claim that they were ignorant of pendency of the present proceedings cannot be decided merely for asking in the applications particularly in absence of any convincing reasons.

8. Though the learned Counsel appearing on behalf of the applicants has relied upon the judgment of the Apex Court in the matter of Ram Nath Sao (supra), still perusal of the same discloses that the Apex Court was considering the claim for condonation of delay of two years.

9. In the instant case, what is sought to be prayed before this Court is condonation of delay of 14 years and odd months, claiming the same to have been explained only by stating that the applicants were unaware

(7)

about pendency of the said proceedings.

10. The Apex Court, in the matter of Balwant Singh (supra), has observed in para 13 of the judgment as under :-

“13. As held by this Court in the case of Mithailal Dalsangar Singh (supra), the abatement results in the denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be construed liberally. We may state that even if the term ‘sufficient cause’ has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of ‘reasonableness’ as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly. The application filed by the applicants lack in details.

(8)

Even the averments made are not correct and ex-facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflect normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party. In the case of [State of Bihar v. Kameshwar Prasad Singh](#) [(2000) 9 SCC 94], this Court had taken a liberal approach for condoning the delay in cases of the Government, to do substantial justice. Facts of that case were entirely different as that was the case of fixation of seniority of 400 officers and the facts were required to be verified. But what we are impressing upon is that delay should be condoned to do substantial justice without resulting in injustice to the other party. This balance has to be kept in mind by the Court while deciding such applications. In the case of [Ramlal and Others v. Rewa Coalfields Ltd.](#), [AIR 1962 SC 361] this Court took the view:

"7. In construing [Section 5](#) it is relevant to bear in mind two important considerations.

The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has

(9)

accrued to the decree holder by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chathappan, ILR 13 Mad 269.

It is however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by [Section 5](#). If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration;..."

11. In the aforesaid backdrop, it could be noted that the applicants, legal representatives of original petitioner, were not vigilant in pursuing the proceedings before this Court. Applicant no.1 is aged about 90 years, whereas applicant no.2 claims to be 34 years and applicant no.3 of 46 years old. On the date of filing of the petitions, all the applicants were major and the cause title depicts that they are residents of the same place where the suit property is located.

12. As such, there is sufficient material as could be borne out of the record that the applicants had enough knowledge about pendency of the proceedings as they are enjoying the property in question, particularly when applicant no.1 is a widow of the deceased petitioner.

13. In the aforesaid backdrop, having regard to the fact that delay is not at all explained, in my opinion, the prayers for condonation thereof, setting aside abatement and bringing applicants as legal representatives of original petitioner on record, are liable to be rejected, particularly having regard to the law laid down by the Apex Court in the matter of Balwant Singh (supra). In that view of the matter, these three Civil Applications fail and stand rejected. As a consequence thereof, writ petitions also stand dismissed as abated.

14. Learned Counsel appearing on behalf of the applicants submits that the applicants intend to question this order before the Apex Court and as such, interim order passed by this Court be continued for a period of six weeks from today. The prayer is opposed on behalf of the respondents.

(11)

15. Considering the fact that the petitioner is claiming to be allottee since 1965, the interim order as passed by this Court is continued for a period of six weeks from today.

(NITIN W. SAMBRE, J.)

amj