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

CIVIL APPLICATION NO.13749 OF 2017 IN
WRIT PETITION NO.303 OF 2004

Sau. Sarlabai w/o Shankarrao Kulkarni,
Died.
and others ... APPLICANTS

VERSUS

The State of Maharashtra and another ... RESPONDENTS

.....
Shri Pratik Bhosale, Advocate holding for
Shri A.B. Kale, Advocate for applicants
Shri Y.G. Gujarathi, A.G.P. for respondent No.1.
Shri A.N. Kakade, Advocate for respondent No.2
.....

WITH

CIVIL APPLICATION NO.13750 OF 2017 IN
WRIT PETITION NO.303 OF 2004

Sau. Sarlabai w/o Shankarrao Kulkarni,
Died.
and others ... APPLICANTS

VERSUS

The State of Maharashtra and another ... RESPONDENTS

.....
Shri Pratik Bhosale, Advocate holding for
Shri A.B. Kale, Advocate for applicants
Shri Y.G. Gujarathi, A.G.P. for respondent No.1.
Shri A.N. Kakade, Advocate for respondent No.2
.....

((2))

WITH

CIVIL APPLICATION NO.13751 OF 2017 IN
WRIT PETITION NO.303 OF 2004

Sau. Sarlabai w/o Shankarrao Kulkarni,
Died.
and others

... APPLICANTS

VERSUS

The State of Maharashtra and another ... RESPONDENTS

.....
Shri Pratik Bhosale, Advocate holding for
Shri A.B. Kale, Advocate for applicants
Shri Y.G. Gujarathi, A.G.P. for respondent No.1.
Shri A.N. Kakade, Advocate for respondent No.2
.....

CORAM: RAVINDRA V. GHUGE AND
 SUNIL K. KOTWAL, JJ.

DATED : 15th NOVEMBER, 2017.

ORAL ORDER :

1. We have heard the learned Advocates for the litigating sides and the learned A.G.P. on behalf of the State.

2. All these three applications have been filed for seeking condonation of delay of 10 years and 6 months in the first Civil Application, 9 years and 6 months in the second Civil Application and 1 year and 5 months in the third Civil Application, for bringing the legal representatives of deceased petitioner No.4 Dhrukumar Shankarrao Kulkarni, petitioner No.1 Sau. Sarlabai Shankarrao

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Kulkarni and petitioner No.6 Achutya Shankarrao Kulkarni, respectively.

3. Learned A.G.P. and the learned Advocate for the non-applicant Municipal Council have strenuously opposed these three applications.

4. Insofar as the third application is concerned, it is submitted that, if this Court is inclined to allow the same, cost may be imposed and the costs may be donated to High Court Bar Library.

5. We have considered the pleadings in the Civil Applications in the light of the submissions of the learned Advocates.

6. In the first application, Dhrukumar Shankarrao Kulkarni has died on 10.10.2007. A skeletal reason is assigned in the application that the applicant did not have the knowledge of the pending Writ Petition No.303/2004.

7. In the second application, Sau. Sarlabai has passed away on 4.2.2008 and the same skeletal reason has been assigned for seeking condonation of delay.

8. In the third application Achyut Shankarrao Kulkarni

has died on 3.3.2016.

9. All these applications are for bringing the legal representatives of the deceased petitioner Nos.1, 4 and 6 on record. While scrutinising the reason assigned by the applicants, we find that the deceased Sarlabai, petitioner No.1 is the mother of the five other petitioners. Petitioners No.2 to 6 are real brothers, out of whom petitioner No.4 Dhrukumar Shankarrao Kulkarni and petitioner No.6 Achyut Shankarrao Kulkarni have passed away. Address of all the petitioners is said to be the same as per the cause title of the petition.

10. Considering the above, especially with regard to the first two Civil Applications, where the delay is of more than 10 years and 9 years and 6 months respectively, we find that the reason assigned is unbelievable and probably, false. These real brothers staying together indicates that they have the knowledge of the pending petition and it cannot be accepted that they did not know that the petition was pending.

11. Considering the above and the inordinate delay caused in the first two applications, the said applications are rejected and the order of abatement as against petitioner No.1 and petitioner No.4 cannot be recalled.

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12. Insofar as the third Civil Application is concerned, the delay is of 1 year and 5 months, which cannot be said to be inordinate. We are, therefore, allowing the third Civil Application No.13751/2017, filed by the legal representatives of deceased Achyut Shankarrao Kulkarni. The delay of 1 year and 5 months is condoned by imposing a total cost of Rs.5000/- (Rupees five thousand) which shall be deposited with the Bombay High Court Bar Association Library, Bench at Aurangabad within a period of four weeks from today, failing which this order shall stand recalled and the third Civil Application No.13751/2017 shall then stand rejected.

13. If the above directions are complied with, the legal representatives of deceased Achyut Shankarrao Kulkarni shall be brought on record by the surviving petitioners within a period of six weeks from today.

(SUNIL K. KOTWAL)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

fmp/