

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

**CIVIL APPLICATION NO.1683 OF 2016
IN
WRIT PETITION NO.6071 OF 1996
ALONG WITH
CIVIL APPLICATION NO.1734 OF 2016
IN
WRIT PETITION NO.6072 OF 1996**

**Mohan Genaba Sabale
since deceased by heirs
Smt. Nirmala Mohan Sabale and ors. : Applicants.**

In the matter between

**Govind Genba Sable and anr. : Petitioners.
versus
Pramod Prabhakar Panse and ors. : Respondents.**

**Ms. Anjali R S Baxi for the Applicants.
Mr. V S Shastry for the Respondent Nos.1 to 4 and 6.
Mr. A S Patil for the original Petitioner No.1.**

**CORAM : R. M. SAVANT, J.
DATE : 13th January 2017**

P.C.

1 The above Civil Application No.1734 of 2016 is not on board. With the consent of the learned counsel for the parties the same is taken on board and heard along with Civil Application No.1683 of 2016.

2 The above Civil Applications have been filed for bringing the heirs of the original Petitioner No.2 Mohan Genaba Sabale on record. The Applicants are the heirs of the said Mohan Genaba Sabale. The above Writ

Petitions have been filed challenging the orders passed by the Maharashtra Revenue Tribunal by which orders the Revision Applications filed by the said Mohan Genaba Sabale being Nos.MRT. P. VIII.2/94 (TNC B.269/1994) and MRT. P. VIII.1/94 (TNC B.268/1994) came to be dismissed and resultantly the order under Section 32P passed under the Bombay Tenant and Agricultural Lands Act came to be confirmed. The Petitioners claimed to be the original tenants of the lands in question and the Respondent Nos.1 to 4 and 6 to the above Petitions claim to be the original landlords.

2 In so far as Petitioner No.2 is concerned, he has expired on 07/10/1999. The Applicants herein are his heirs. It is the case of the Applicants as set out in the above Civil Applications and especially in paragraphs 2 and 3 thereof that the Applicants were not aware of the proceedings pending in this Court as they were being prosecuted by their father. It is also their case that the Petitioner No.1 who is their uncle has not properly informed them and has kept them in dark. It is their case that they became aware of the pendency of the instant Writ Petitions when other tenants in the suit land entered into a compromise with the Respondent landlord. It is further their case that they made enquiries with their uncle but he gave them evasive replies. It is their case that they started enquiries about their lawyer in Mumbai and on such enquiries they came to know that the lawyer engaged by their father Shri M V Sali has expired in the year 2014. The Applicants in the original Civil Applications have

stated that they have a good case on merits and therefore, they have sanguine hopes of succeeding in the Petitions.

The Applicants have filed additional affidavits with a view to give further particulars in respect of the case set out by them in the Civil Applications as originally filed. In the additional affidavit they have stated that when they became aware of the litigations, then they filed lis pendence notice on 16/11/2012. It is further their case that in December 2014 their advocate had passed away and that thereafter in January 2015, they have made enquiry in the office of this Court. It is on such enquiry they came to know that on 03/11/2014 one of the tenants Laxman More had entered into a compromise with the Respondents and withdrawn the Petition i.e. Writ Petition No.6078 of 1996 which was companion to the instant Petitions. It is further their case in the said additional affidavit that in January 2015, they have given an application in the office of this Court for papers and proceedings in the Petitions and that the reply to the said application was received by them on 03/06/2016. It is further their case that in the interregnum they came to know that the Respondents have already created third party rights in the suit property in 2014 and that they have entered into a registered agreement with their uncle i.e. Petitioner No.1 on 17/10/2015. It is their case that after collecting all papers that they have filed the present Civil Applications for bringing them on record as the heirs of the original Petitioner No.2.

3 On behalf of the Respondent Nos.1 to 4 and 6 an affidavit in reply has been filed and the case made out by the Applicants both in the Civil Applications as originally filed as well as the additional affidavit is sought to be countered. It is stated by the Respondent Nos.1 to 4 and 6 that lis pendence notice being No.6310 of 2012 being filed by the Applicants and the same is registered on 16/11/2012. It is the case of the Respondents that in the said lis pendence notice, a reference is clearly made to Writ Petition Nos.6071 of 1996 and 6072 of 2016. The Respondents have thereafter referred to Mutation Entry No.1386 which is made on the basis of the list pendence notice. It is also the case of the Respondents that the Applicants are for obvious reasons seeking to shift the burden on the Petitioner No.1. It is on the basis of the aforesaid facts that the case of the Applicants that they became aware of the litigation after the compromise between the Respondent Nos.1 to 4 and 6 and the other tenants came to be known to them is being questioned by the Respondents. The Respondents have also questioned the case of the Applicants on the basis of the alleged evasive replies given by their uncle. It is on the said basis that the Respondent Nos.1 to 4 and 6 have contended that the Applicants have not made out sufficient cause for condonation of delay of about 16 years and 7 months in filing the above Civil Applications.

4 The learned counsel for the parties i.e. Ms. Anjali R S Baxi for the

Applicants and Shri V A Shastry for the Respondent Nos.1 to 4 and 6 would make submissions for and against the above Civil Applications being allowed and heirs of the Petitioner No.3 being allowed to be brought on record.

5 Whilst the learned counsel appearing for the Applicants would reiterate the case of the Applicants as urged in the Civil Applications as well as the additional affidavits. The learned counsel Shri Shastry for the Respondent Nos.1 to 4 and 6 would question the reasons mentioned on the basis of the case set out in the affidavit in reply filed on behalf of the Respondent Nos.1 to 4 and 6.

6 Having heard the learned counsel for the parties I have considered the rival contentions. The question is whether the delay in the instant case in filing the Civil Applications for bringing the heirs of the original Petitioner No.2 on record is required to be condoned. It is required to be noted that the Petitioner No.2 has expired on 07/10/1999. The Applicant No.1 Smt. Nirmala Mohan Sabale is the wife of the said Mohan Sabale and from the record it can be deciphered that she was about 49 years of age at the time of the death of the said Mohan Sabale. From the record it can also be deciphered that Devidas the son of the deceased Petitioner No.2 was 19 years of age and the other son Vinod was about 18 years of age when the Petitioner No.2 died. The case of the Applicants that they were not aware of the instant proceedings as the same

were being prosecuted by their father can be plausible considering the fact that the Applicant No.1 the wife cannot be expected to know the minute details of the legal proceedings being prosecuted by her husband. The sons of the deceased Petitioner No.2 viz. Devidas and Vinod were 19 and 18 years of age, therefore were barely major they also cannot be expected to know about the legal proceedings and their consequences though they might be aware that their father was prosecuting some proceedings. No doubt the Applicants have registered lis pendence notice on 16/11/2012. This might be on account of the fact that the Applicants might have apprehended that their interest might be affected if such course of action is not followed. The case of the Applicants that they became aware of the Petitions only after they got knowledge of the compromise between the other tenants and Respondents landlords, juxtaposed with the fact that they had filed lis pendence notice in the year 2012 is slightly dented, the fact remains that the ground made out by them that they were not aware of the lawyer engaged by their father and only after enquiries they came to know that the lawyer engaged by their father had expired in the year 2014, appears to be plausible. The fact that they have filed an application in the registry of this Court and that they received the reply from the registry in the year 2016 and only after collecting the papers that they could file the instant Civil Applications cannot be brushed aside. It is required to be noted that the Petitioner No.1 who is their uncle is the other Petitioner who is prosecuting the above Petitions. It is also required to be noted that in matters of condonation of

delay a highly pedantic and technical approach should be eschewed and an approach which furthers the case of substantial justice should be adopted. No doubt there is a delay in the Applicants approaching this Court, however, in the context of the reasons set out in the Applications as well as the additional affidavits, it cannot be said that sufficient cause is not shown by the Applicants. It also cannot be said that prejudice to the other side would be caused considering the fact that in the Petitions there is another Petitioner who is on record. The Respondent Nos.1 to 4 and 6 can be compensated by costs which can be directed to be paid by the Applicants. In that view of the matter, the above Civil Applications are allowed. The heirs of the Petitioner No.2 i.e. the Applicants are allowed to be brought on record in both the Petitions. The abatement would accordingly stand set aside. Amendment in the cause title to be carried out within two weeks from date. In the facts and circumstances of the present case, the Applicants to pay costs of Rs.3,000/- to the Respondent Nos.1 to 4 and 6 to be handed over to Shri Shastry on their behalf within the aforesaid period of two weeks. The above Civil Applications are accordingly disposed of.

[R.M.SAVANT, J]