

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

**CIVIL APPLICATION NO.23 OF 2017
in
WRIT PETITION NO.4864 OF 2003**

Narhar Rango Kulkarni (deceased)
through LRs... Applicants
vs
Milind Shripad Bendre Respondent

**with
CIVIL APPLICATION NO.24 OF 2017
in
WRIT PETITION NO.4864 OF 2003**

Narhar Rango Kulkarni (deceased)
through LRs... Applicants
vs
Milind Shripad Bendre Respondent

Mr.S.S.Patwardhan for Applicants
Mr.S.D.Mogre for Respondent
Applicant no.2 present in person

CORAM: K.K.TATED, J
DATE: 29 MARCH 2017

P.C.

1. Heard learned counsel for parties.
2. Civil Application No.23 of 2017 is for recalling the order

RNG

901.ca.23.7.24.17.wp4864.03

dated 12 August 2016 passed by this Court in Civil Application No.1725 of 2016 dismissing the Petition as abated in view of death of original Petitioner-Rango Kulkarni on 3 October 2012.

3. Civil Application No.24 of 2017 is preferred by the legal heirs of the sole Petitioner for condonation of delay in filing the Civil Application, setting aside the abetment of Writ Petition No.4864 of 2003 and for bringing legal heirs on record of deceased-sole Petitioner in Writ Petition No.4864 of 2003.

4. The learned counsel Mr.S.S.Patwardan appearing for the Applicant submits that there was a delay on the part of the legal heirs to take appropriate steps immediately for bringing legal heirs of deceased sole Petitioner on record in Writ Petition No.4864 of 2003. He submits that their previous Advocate informed them about the next date in Civil Application No.1725 of 2016 on 20 July 2016. He submits that the Applicant no.1 being a widow and not keeping well, it remained on her part to take immediate steps for bringing the legal heirs on record of deceased-sole Petitioner. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the Applicant to bring the legal heirs on record of deceased-sole Petitioner by recalling order dated 12 August 2016 in Civil Application No.1725

RNG

901.ca.23.7.24.17.wp4864.03

of 2016 and for setting aside the abetment. He further submits that the Applicant be permitted to join the daughter of deceased-sole Petitioner Mrs.Kirti Vardendra Deshpande as a Respondent in Writ Petition. He submits that as per their knowledge, she relinquished her right, title and interest in the deceased Petitioner's property. Hence, her name was not shown in the Civil Application. He submits that if the impugned order dated 12 August 2016 and if Civil Application No.24 of 2017 is not allowed, irreparable loss and injury will be caused to them. He submits that they have a good chance of success in the present Petition.

5. On the other hand, the learned counsel Mr.S.D.Mogre appearing on behalf of the Respondent vehemently opposed both the present Civil Applications. The Respondent filed his Affidavit-in-reply dated 2 February 2017. The Respondent in paragraph 7 of his reply has raised an objection about deliberately not adding the name of the married daughter of original Petitioner Mrs. Kirti Vardendra Deshpande in the present proceedings. He further submits that though Civil Application No.1725 of 2016 preferred by the Respondent was duly served on the Applicant's Advocate in advance, the Applicant failed and neglected to take appropriate steps for bringing the legal

RNG

901.ca.23.7.24.17.wp4864.03

heirs of deceased Petitioner on record. He submits that there is no explanation in the Civil Application for the delay of more than four years in preferring the Civil Application. He submits that the Respondent-Plaintiff is a senior citizen and he is opposing the Writ Petition for the last more than 10 years. He submits that in the interest of justice, this Hon'ble Court be pleased to dismiss the present Civil Applications.

6. It is to be noted that the Apex Court in the matter of **N.Balkrishnan Vs.M.Krishnamurthy (1998) 7 SCC 123** held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixed a lifespan for such legal remedy for the general welfare. Paragraph Nos.11,12 and 13 of the said judgment read thus:

“11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules

of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of malafides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

7. In the present proceedings, the Applicant no.1 is a widow and was not keeping well. As soon as she learnt about the Civil Application preferred by the Respondent being Civil Application No.1725 of 2016, she immediately preferred the present Civil

RNG

901.ca.23.7.24.17.wp4864.03

Application for recalling the order dated 12 August 2016 and for allowing her to bring legal heirs of deceased Petitioner on record.

8. During the course of arguments, learned counsel Mr.S.S.Patwardhan appearing on behalf of the Applicants after taking instructions from Applicant no.2 who is present in Court agrees that they have no objection to pay a sum of Rs.50,000/- to the Respondent by way of costs. To that effect, he has given in writing. The same is taken on record and marked 'X' for identification.

9. Considering the submissions made by learned counsel for the Applicants, as the Applicant no.1 is a widow was not keeping well and in view of observations made by the Apex Court in **N.Balkrishnan** (supra), I am satisfied that the Applicant has made out a case for allowing both the Civil Applications on payment of costs of Rs.50,000/- to the Respondent as under :

ORDER

(i) Order dated 12 August 2016 passed by this Court in Civil Application No.1725 of 2016 is recalled ;

(ii) Abetment of Writ Petition No.4864 of 2003 is set aside ;

(iii) Delay in preferring the Civil Application for bringing legal heirs on record of deceased

petitioner Narhar Rangoo Kulkarni is condoned ;

(iv) The Applicant is permitted to bring legal heirs on record of deceased Petitioner in Writ Petition No.4864 of 2003 within three weeks from today ;

(v) The Applicant no.1 is permitted to join her married daughter Mrs.Kirti Vardendra Deshpande as Respondent no.2 in Writ Petition No.4864 of 2003 ;

(vi) Amendment to be carried out within three weeks from today ;

(vii) If amendment is not carried out within the stipulated time, as stated herein above both the Civil Applications shall stand dismissed without referring back to the Court ;

(viii) If amendment is carried out within the stipulated time as stated above, the Applicant to serve the amended copy of Writ Petition on Respondent's Advocate as well as the added Respondent no.2 Mrs. Kirti Vardhanan Deshpande by private notice either by by RPAD and/or by hand delivery and to file an Affidavit of service to that effect on or before the next date ;

(ix) The Applicant to pay a sum of Rs.50.000/- by way of costs to the Respondent within four weeks from today failing which both the Civil Applications shall stand dismissed without referring back to the Court.

(x) If the amount is paid within the stipulated time as stated herein above, the Applicant to intimate the Registry about the same in writing ;

RNG

901.ca.23.7.24.17.wp4864.03

Both Civil Applications stand disposed of
accordingly.

(K.K.TATED,J)