

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

27 CIVIL APPLICATION NO.10681 OF 2016
IN SA/329/1997 WITH CA/10682/2016 IN SA/329/1997

MEENA BASWANAPPA TIKAMBARE & OTHERS.

VERSUS

BASHAMIYA MADARSAHEB NILANGEKAR DIED JAHIRABEE
DIED

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Advocate for Applicant : Mr. Choudhary S.S.;
Mr. PS Chavan, Adv. For Lrs of R/1 & 2 Through
GPA.

CORAM : P.R.BORA, J.

DATE : 16th July, 2018.

PER COURT :

1) The present application is filed for taking on record legal heirs of deceased Respondent Nos.1 and 2, by condoning the delay which has occasioned in filing the said application and also for setting aside the abatement caused. Delay of 2,409 days is caused for bringing on record the legal heirs of deceased Respondent No.1; and delay of 2549 days is caused for bringing on record the legal heirs of Respondent No.2.

2) In the application, it is the contention

of the applicants that since their uncle viz. Sidram Libanappa Tikambare, who was looking after the Second Appeal, fell ill due to cancer in the year 2009 and remained under the treatment till the year 2012, the progress in the second appeal could not be known to the present applicants. It is further contended that since said Sidram was looking after the proceedings, the applicants could not even contact their advocate to know the progress of the second appeal. It is further contended that during pendency of the second appeal, Respondent Nos.1 and 2 died but because of the illness of said Sidram, necessary steps, for bringing the legal heirs of deceased Respondent Nos.1 and 2, could also not be taken. Resultantly, the second appeal stood abated against Respondent Nos.1 and 2.

3) Shri Choudhari, learned counsel appearing for the applicants, submitted that the delay caused in filing the application is for bonafide reasons and unintentional. The learned counsel further submitted that the appeal was

admitted and it was pending for hearing. Since uncle of the present applicants was looking after the second appeal, they were unaware of progress of the said second appeal and in such circumstances, the delay has occurred in filing the present application.

4) The request so made has been strongly opposed by the respondents. Affidavits in reply were filed on 25th June, 2018. Thereupon, applicant No.2 - Hanumant has also filed his affidavit in support of the application.

5) I have carefully perused the contents of the application and both the reply affidavits. It is revealed that when the suit was filed, the applicants were minor and the suit was filed through one Shrimant Libanappa Tikambare. It is further revealed that even during the course of the first appeal, the matter was being looked after by said Shrimant. When the Second Appeal was filed, by that time, the appellants/applicants had become major, i.e. they were aged 25 yrs., 30 yrs., and 28 yrs.,

respectively. So the contention on their behalf that their uncle was looking after the said second appeal, *prima facie*, appears to be unacceptable. Moreover, it is nowhere explained as to why Shrimant Tikambare, who was by the said time looking after the said litigation, did not look after the Second Appeal and how Sidram came in picture. It is further unconscionable that for the period of 6-7 years, the applicants could not have, at least once, enquired with their counsel as to what has happened to their appeal.

6) The gross negligence has been shown by the applicants in conducting their matter. Though it is true that while considering the application for condonation of delay, the courts are supposed to be more liberal and justice oriented approach has to be adopted, it does not mean that if the gross negligence is noticed on part of the applicants even that is to be ignored. While considering the case of the applicants, case of the opponents, in whose favour the orders are passed, cannot be lost

sight of.

7) The applicants have failed in explaining the huge delay of about six years in filing the application for setting aside the order of abatement and to take on record the legal heirs of deceased Respondent Nos.1 and 2. In absence of any sufficient cause, the delay of the huge period of six years cannot be condoned. In the result, the following order is passed -

ORDER

- i) Civil Application No.10681 OF 2016 is rejected.
- ii) Consequently, the Second Appeal stands abated and disposed of;
- iii) Pending Civil Application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/