

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.9442 OF 2017

(Habab Ali Habib Hussain (Died), through LR's Vs. Ayesha Begum
Hamid Chous)

IN

A.O. NO.133 OF 2009

WITH

CIVIL APPLICATION NO.9444 OF 2017

Mr.G.K.Naik Thigle, Advocate for the applicants

Mr.M.A.Deshmukh h/f Mr.S.G.Chapalgaonkar, Advocate for the
respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 07/09/2018

PER COURT :

1. The applicants, who are the LR's of the sole appellant in A.O.No.133/2009, pray for condonation of delay of 2358 days caused in seeking restoration of the AO, which has been abated. A similar civil application has been filed with reference to other LR's.

2. The contention is that the original appellant belonging to the Muslim Community, was the only litigant. Since the LR's of such a person are not entitled to any rights in the property during the lifetime of the title holder, the applicants were unaware about the pending proceedings between the appellant and the sole respondent.

3. Out of the applicants, who claimed to be the sisters and brothers of the deceased Habab Ali s/o Habib Hussain, one sister resides in the Gulf and other brothers and sisters are scattered in Districts Beed and Aurangabad. It consumed some time in noticing these proceedings. It is further stated that the property at issue is a house situated at Beed and these applicants would lose a valuable right in seeking their share in the property.

4. Learned Advocate for the respondent submits that the reasons assigned are not sufficient and convincing. He relies upon the judgment of the Hon'ble Apex Court in the matter of Balwant Singh (Dead) Vs. Jagdish Singh and others [2010(8) SCC 685]. The Apex Court has concluded that sufficient cause implies presence of legal and adequate reasons. There is no straight jacket formula to be made uniformly applicable in all cases. The test is that the Judge should examine whether or not a sufficient cause has been shown.

5. It cannot be disputed that in the Muslim Community, the LR's have no right to the property during the lifetime of the title holder. The applicants claim to be the brothers and sisters of the deceased Habab Ali, who are in between 54 to 71 years and some of them are youngsters who are in business, education and are scattered. The

AO stood abated on account of the demise of the appellant and these applicants would be permanently prevented from seeking their rights / shares in the immovable property.

6. Considering the above, these civil applications are allowed by imposing costs of Rs.15,000/- (Rs.Fifteen thousand only) which these applicants shall deposit in this Court on or before 06/10/2018. Learned Advocate for the respondent submits that 1/3rd of the costs be donated for the treatment of poor patients.

7. Consequentially, the applicants shall deposit an amount of Rs.5,000/- (Rs.Five thousand only) with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of "**Dean, Government Medical College and Hospital, Aurangabad Dengi Samiti**") on or before 06/10/2018 and shall deposit Rs.10,000/- (Rs. Ten thousand only) in this Court before the said date. The respondents would be at liberty to withdraw the said amount under identification by the learned Advocate alongwith the Election Commission Voter ID card. The LR's shall be brought on record in the AO on or before

12/10/2018 .

8. Consequentially, CA No.9444/2017 is also allowed and the applicants, who are LR's of the deceased Habab Ali, shall accordingly be brought on record. Subject to the above and on removing all office objections, the AO shall stand restored.

9. It is made clear that all contentions and objections of the litigating sides including as to whether there is any dispute as regards the LR's of deceased Habab Ali are kept open to be considered while hearing the A.O.

(Ravindra V.Ghuge, J.)

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