

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12326 OF 2017

JAHEDABEE BABULAL PATEL
VERSUS
NASEER SANDU SHAIKH AND OTHERS

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Advocate for Petitioner : Shri Shaikh Kayyum Najir

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 09, 2018

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PER COURT :-

1. Despite court notice, none has appeared for original respondents. I have heard the learned Advocate for the petitioner / plaintiff.

2. The petitioner had preferred RCS No.553 of 2011 seeking administration of his estate. Process fees were not deposited and hence the suit was dismissed in default as per Order IX Rule 2 of the Code of Civil Procedure on 1.8.2013. An application - MARJI No.73 of 2013 was preferred on 3.10.2013 praying for condonation of delay in view of the limitation of 30 days being over. As such, barring the limitation period of 30 days, the delay caused in filing the application was of about 64 days.

3. The law on condonation of delay has been crystallized by the Honourable Apex Court in the matter of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], and Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [(2013) 12 SCC 649].

4. The petitioner would be rendered remediless if the delay is not condoned. The pleadings of the parties do not indicate that the petitioner desires to take undue advantage of the delay caused, inasmuch as, ulterior motives or laches are not attributed to her conduct. There would be multiplicity of litigation if the delay is not condoned as the petitioner would be required to knock the doors of the superior Court as has occurred in this proceeding.

5. Learned counsel for the plaintiff submits that being a lady of advanced age, she would prefer to deposit costs of Rs.2,000/- in this Court.

6. Considering the above and keeping in view that the original defendants have failed to appear in these proceedings, I am of the view that the amount of costs of Rs.2,000/- could be

donated to a public cause like the Government Hospital, at Aurangabad.

7. In the light of the above, this petition is allowed. The impugned order dated 8.9.2017 passed by the trial Court is quashed and set aside and MARJI No.73 of 2013 is allowed subject to costs of Rs.2,000/- to be deposited on/or 25.7.2018 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 - CSR Fund**”) and shall report compliance of this direction by producing a receipt of having deposited the amount, before the Registrar (Judicial) of this Court on or before 31.7.2018.

8. It is made clear that this Court has not expressed any view as regards the restoration application filed by the petitioner, which now would be registered by the trial Court and would be considered on it's own merits.

(RAVINDRA V. GHUGE, J.)

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