

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Civil Application No. 05539 of 2019
(In Civil Application No. 12599 of 2010)
(In Review Application Stamp No. 25490/2010)
(In Second Appeal No. 103 of 2006)

District : Beed

1. Sayed Nasiruddin
s/o. Sayed Afzaloddin,
Age : 70 years,
Occupation : Agriculture,
R/o. Neknoor,
Taluka & Dist. Beed.
2. Shahajadi Begum
w/o. Valiuddin (died).
3. Roshanbi w/o. Valiuddin
(died),
Through L.Rs.,
 - 3A. Shakil s/o. Valiuddin,
Age : 58 years,
Occupation : Business,
R/o. as above.
 - 3B. Jufer s/o. Valiuddin,
Age : 45 years,
Occupation : Business,
R/o. as above.
 - 3C. Shakir s/o. Valiuddin,
Age : 51 years,
Occupation : Business,
R/o. as above.
 - 3D. Baba s/o. Valiuddin,
Age : 43 years,
Occupation : Business,
R/o. as above.
 - 3E. Banu Begum
w/o. Shaikh Dinali,

Age : 52 years,
Occupation : Business,
R/o. as above.

3F. Akhilabegum
w/o. Shaikh Saleem,
Age : 42 years,
Occupation : Agriculture,
R/o. as above.

3G. Nasreen Begum
w/o. Sk. Jafar @ Baba,
Age : 37 years,
Occupation : Household,
R/o. Shahenshah Nagar,
Beed.

3H. Sima Begum
w/o. Sk. Nasim,
Age : 40 years,
Occupation : Household,
R/o. Neknoor,
Taluka & Dist. Beed.

.. Applicants.

versus

1. Liyakatbi w/o. Sayyad Jamuddin,
Age : 75 years,
Occupation : Agriculture
& Household,
R/o. Neknoor,
Taluka & Dist. Beed.

2. Baba s/o. Sayyad Jamruddin,
Age : 46 years,
Occupation : Agriculture,
R/o. Neknoor,
Taluka & Dist. Beed.

3. Moin s/o. Sayyad Jamruddin,
Age : 41 years,
Occupation : Agriculture,
R/o. Neknoor,
Taluka & Dist. Beed.

4. Hamid s/o. Sayyad Jamruddin,
Age : 62 years,
Occupation : Agriculture,

R/o. Neknoor,
Taluka & Dist. Beed.

5. Sayed Munnawar Ali
s/o. Sayed Hyder Sahev,
Age : 81 years,
Occupation : Agriculture,
R/o. Neknoor,
Taluka & Dist. Beed.

6. Sayed Pasha
s/o. Sahhad Dadamiya,
Age : 61 years,
Occupation : Agriculture,
R/o. Neknoor,
Taluka & Dist. Beed.

7. Chanu Begum w/o. Razzak,
Age : 38 years,
Occupation : Household,
R/o. Urili Kanchan,
Taluka & Dist. Pune
[dismissed]

8. Taslim Begum
w/o. Shaikh Anis,
Age : 32 years,
Occupation : Household,
R/o. Karchundi,
Taluka & Dist. Beed.
[dismissed].

.. Respondents.

.....

*Mr. V.C. Patil (Ashtekar), Advocate, for the
applicants.*

*Mr. C.V. Dharurkar, Advocate, for respondents
no.01 to 04.*

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 29TH APRIL 2019

ORDER :

01. Present application has been filed for condonation of delay of 88 days caused in filing present application. The applicants have also sought restoration of civil application seeking condonation of delay in filing review application by setting aside the order of dismissal in default passed on 27-11-2018.

02. The applicants have contended that they have filed an application for review of the judgment and order passed by this Court in Second Appeal No. 103 of 2006 on 05-03-2010. After dismissal of the second appeal, present applicants had filed Special Leave Petition before the Hon'ble Apex Court. It was withdrawn by them and immediately they have filed the review application. However, there is delay caused in filing review application. The civil application along with review was filed. The applicants had appointed Advocate Mr. S.M. Godsay as Counsel. The Advocate on record and appointed Counsel appeared and argued the matter from time to time before this Court. The matter was listed on 27th November 2018. However, by observing that the matter was fixed for hearing several times, it was adjourned in the past, the matter came to be dismissed in default on that day. It is stated that on that day, the Advocate on record could not mark out the matter. So also, the

Counsel appointed was suffering from severe illness and was admitted in the hospital. He passed away in the month of February 2019. After getting knowledge of death of said Counsel, the applicants made enquiry with the Advocate on record about status of the matter and thereafter they came to know that the matter was dismissed on 27-11-2018. It is stated that due to communication gap between the Advocate on record and appointed Counsel, the matter came to be dismissed in default. It is stated that the applicants cannot be compelled to suffer due to fault of their Advocate. The delay is unintentional. The valuable rights of the applicants are involved since last more than 20 years and they are fighting for their justice. After getting the knowledge about dismissal and collecting no objection certificate from the earlier Advocate, the applicants have filed this appeal to which there is delay of about 88 days and hence they have prayed for condonation of delay and restoration of the review application after setting aside its dismissal order.

03. The application has been objected by the respondents strongly by contending that each time the matter has been delayed because of the applicants. A detail order has been passed by this Court on 27-11-2018 and the circumstances in which the matter came to be dismissed.

04. Heard both sides. Learned Advocate appearing for the applicants as well as learned Advocate appearing for respondents made submissions in respect of respective contentions of the parties.

05. At the outset, it can be seen that from the record, it does not appear that Advocate Mr. Godsay was ever appointed and he had filed any Vakalatnama representing the applicants. He was not a Senior Counsel. Under such circumstance, at the most, he could have appeared as holding for Advocate on record. Reasons for his absence cannot be considered at all legally. There is absolutely no reason given by the applicants as to why their Advocate on record could not argue the matter and why they had not thought it fit to have Vakalatnama of Mr. Godsay on record. If we peruse the order passed by this Court on 27-11-2018, it speaks for itself. The said order is hereby reproduced for the sake of convenience :-

"1. None present for the applicant. Second Appeal No.103 of 2006 was dismissed on 05-03-2010. The review petition has been filed with a delay of 149 days. It is pending for seven years. It was fixed for hearing several times. It was adjourned as a last chance on 18-07-2018 and it was recorded that if the matter is not worked out on the adjourned date, the necessary orders would follow. Again on 23-07-2018 it was adjourned as a last chance as it was not worked out. On 21-09-2018, it was specified that the adjournment was granted as a last chance for hearing and in default for order of dismissal. Again on 10-10-2018, the

matter was adjourned for hearing or dismissal. Last chance will be only once, but in this case the last chance is given for 3 - 4 times.

2. Considering the above, the application for condonation of delay is dismissed in default. "

06. Thus, taking into consideration the above said order, it can be seen that liberally the adjournments were granted in favour of applicants and last chance was granted thrice. In spite of that, no alternate arrangement was made by the applicants or their Advocate on record, so that the matter could proceed. It was tried to be submitted that Mr. Godsay was hospitalized for a long period and, therefore, he could not appear. When the applicants or the Advocate on record found that he was not in a position to attend the Court, then definitely, alternate arrangement ought to have been made. Even at the time of submission, the same question was put to the learned Advocate for the applicants, but he could not answer it satisfactorily. This Court has finally decided the second appeal. The applicants had approached the Hon'ble Apex Court in Special Leave Petition; but then, they got it withdrawn and they wanted this Court to review its decision. Under such circumstance, they ought to have been diligent if they were prosecuting their rights for so long period. But from the record, it appears that they were just interested in obtaining adjournments without making any alternate arrangement. Therefore,

no case is made out for condoning the delay and for setting aside any order in respect of dismissal of the review petition in default.

07. Hence, the civil application is hereby rejected.

(Smt. Vibha Kankanwadi)
JUDGE

.....