

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

**928 CIVIL APPLICATION NO.5722 OF 2017
IN
SECOND APPEAL NO.649 OF 2014**

**ADINATH SAKHARAM SOLANKE
VERSUS
MATHURABAI VALJINATH KAMBLE AND ORS**

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Mr. G.V. Mohekar, Advocate for the applicant
Mr. B.S. Kudale, Advocate for the respondent No.1
Mr. B.A. Shinde, Advocate for the respondent No.2
Mr. G.C. Nawandar, Advocate for the respondent No.3

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 06th FEBRUARY, 2019

PER COURT :

1 Present application has been filed to bring the legal representatives of respondent No.5 and respondent No.8 on record, however, there is delay of 2997 and 2347 days respectively, therefore, prayer is made to condone the delay. It has been submitted that the present applicant was the original defendant No.8 in Regular Civil Suit No.200/1990. Respondent No.1 had filed the said suit for partition and separate possession against her two brothers and other relatives. It is stated that during the pendency of the

suit the present applicant and one deceased Madan had purchased the property. They were impleaded in the suit in the year 1992. The said suit came to be decreed on 24.11.2000. Original defendant No.1 as well as the present applicant (defendant No.8) preferred two separate appeals i.e. R.C.A. No.96/2004 and R.C.A. No.186/2004. They came to be dismissed by a common Judgment by learned Adhoc District Judge, Majalgaon on 08.02.2007. The present applicant preferred the present appeal and the original defendant No.1 had preferred Second Appeal No.529 of 2007. In Second Appeal No.529 of 2007 Rule was issued and stay was granted, however, the said appeal came to be withdrawn in the year 2015. It is stated that after the withdrawal of the said appeal when original plaintiff filed execution proceeding and thereafter the present applicant moved this Court in the year 2015, notices were directed to be issued to all the respondents and interim relief was granted. Condition was imposed that the applicant would served the respondents properly in addition to the regular mode of service. Accordingly, he has served the respondents by RPAD on 03.03.2017, however, the notice of respondent Nos.5 and 8 returned unserved with remark that they are dead. Under such circumstance, the application has been filed to bring legal representatives of respondent Nos.5 and 8 on record, after the applicant got the knowledge about their death. It is also stated that some period

was consumed for obtaining death certificate as well as getting the information regarding the legal representatives. It is stated that the delay is unintentional.

2 Learned Advocate appearing for legal representatives of respondent No.8 orally objected the application by saying that there is inordinate delay, which has not been properly explained. There is no prayer for setting aside the abatement. As regards the legal representatives of respondent No.5 are concerned, they are served but it appears that nobody is appearing on their behalf.

3 Heard learned Advocate for the applicant also.

4 Few facts are required to be considered. R.C.A. No.186/2004, which was filed by the present applicant before the First Appellate Court was decided on 08.02.2007. Thereafter, though the appeal was filed on 25.08.2008, it appears that there was delay in preferring Second Appeal and therefore, it was filed along with the delay condonation application. It came to be decided on 28.10.2014. However, it appears that in the meantime, respondent No.5 expired on 20.10.2008 and respondent No.8 on 21.07.2010. When the order of condonation of delay was passed by this Court on 28.10.2014, an impression was given that all the parties i.e. respondents have been duly

served, when in fact, two of them had expired. The present applicant appears to be not related to the respondents. Respondent No.5 was residing at Pangri (Kekat), Tq. Gevrai, Dist. Beed and respondent No.8 was resident of Simri Pargaon, Tq. Majalgaon, Dist. Beed, whereas the present applicant is resident of Aamla, Tq. Majalgaon, Dist. Beed. Under such circumstance, it appears that the applicant had no knowledge about death of respondent Nos.5 and 8. The delay to bring the legal representatives appears to be unintentional. Further, when the parties are coming from rural background, liberal approach is required to be taken and therefore, the delay deserves to be condoned. The application cannot be thrown away, merely because there is no prayer for setting aside the abatement. Hence, following order.

ORDER

- 1 Application is hereby allowed.
- 2 The delay caused in bringing legal representatives of respondent No.5 and respondent No.8 on record is hereby condoned, subject to deposit of costs of Rs.5,000/-, in this Court, within 15 days from the date of this order.
- 3 After the deposit of the said amount, it be disbursed to the

legal representatives of respondent No.8 only.

4 Necessary amendment be carried out within aforesaid period.

5 After the amendment is carried out, notices be issued to the legal representatives of respondent Nos.5 and 8. The learned Advocate for respondent No.8 waives notice for the legal representatives of respondent No.8

6 Copy of pending application as well as Second Appeal be supplied to him.

7 As regards the legal representatives of respondent No.5 are concerned, applicant to serve them privately, in addition to the usual mode, made returnable after four weeks.

8 Interim relief to continue till then.

(Smt. Vibha Kankanwadi, J.)

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