

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 6505 OF 2018
IN SECOND APPEAL STAMP NO. 8383 OF 2017

Tukaram Ramchandra Dighe (Died through ...Applicants
LRs) & Ors.

Versus

Anjanabai Karbhari Bagade ...Respondent

.....

Mr. A. T. Kanawade, Advocate for Applicants.

Mr. A. Z. Gandhi, Advocate for Respondent.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 11-01-2019.

ORAL ORDER :

01. Present application has been filed for getting the delay of 605 days in bringing the legal representatives of sole respondent on record.

02. The present applicants are the original defendants, who intend to file second appeal. They presented the same on 15.3.2017. They intend to challenge the Judgment and decree passed in R. C. A. 11 of 2000 decided on 26.2.2015. Under which the Judgment and decree passed in R. C. S. No. 765 of 2018 by Civil Judge Junior Division, Sangamner was under challenge. The suit was

filed against them for the relief of redemption of mortgage, possession of suit land and mesne profits. The suit was dismissed, however, the appeal came to be allowed and therefore, the second appeal is being preferred. It is stated that the applicants are resident of Umabri, Balapur. However, the respondent was not residing there since last more than 15 years. She expired on 26.5.2016 on Kuranpur, Tq. Shrirampur, Dist. Ahmednagar. It will not be out of place to mention here that there is a separate civil application pending bearing Civil Application No. 2502 of 2018 for getting the delay of 657 days condoned for preferring second appeal. It is stated that when the notices of the said application were issued and the report was received that the respondent has expired. They made enquiry and came to know about the legal representatives of the respondent. Therefore, there is delay in filing the appeal. They say that the delay is unintentional and has arisen in peculiar circumstances. On these grounds they have prayed for condonation of delay.

03. The application has been orally objected on the respondents No. 1a to 1c, stating that the delay is inordinate, which has not been explained at all properly. When it is expected that the delay of each and every day

should be explained.

04. Affidavit-in-reply has also been filed.

05. Heard both the sides and perused the record.

06. The basic fact that is required to be noted is that there is delay of 657 days in preferring the second appeal. That application would be considered on its own merits. Under such circumstance, when the matter was itself not before any Court, the parties might not have been have a knowledge about the death of the other. Further, the deceased respondent was not residing in the village, where the applicants are residing. So also her legal representatives are not residing at one and the same place. Under such circumstance, taking into consideration the background of rustic parties and that the delay caused in preferring second appeal will be considered on its own merits. There is no hurdle to allow this application subject to cost.

07. Hence, following order;

ORDER

(i)The delay caused in bringing the legal representatives of the deceased respondent is hereby condoned.

(ii)The applicants are permitted to bring the legal representatives of deceased on record in Civil application as well as the second appeal subject to deposit of cost of Rs. 6,000/- within 15 days from the date of this Order in this Court. After the deposit of the said amount, the necessary amendments be carried out. The said amount be disbursed to respondents No. 1a, 1b and 1c equally.

(iii)Place the application for condonation of delay for consideration on 5th February 2019.

[SMT. VIBHA KANKANWADI]

JUDGE

Dahibhate/-