

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9272 OF 2017

1. Shantaram S/o Mohan Deshmane,
Age : 59 years, Occu : Agri.,
2. Dayaram S/o Mohan Deshmane,
Age : 53 years, Occu : Agri.,
3. Shriram S/o Mohan Deshmane,
Age : 50 years, Occu : Agri.,
4. Kondadev S/o Mohan Deshmane,
Age : 48 years, Occu : Agri. & Service,

R/o : Lahan, Tq. Ardhapur, Dist. Nanded

.. Petitioners
(Orig. Plaintiffs)

Versus

1. Digambar S/o Gangaram Devade,
(Died on 29.09.2006)
2. Anusayabai W/o Digambar Devade,
Age : 65 years, Occu : Household & Agri.,
3. Vijay S/o Digambar Devade,
Age : 43 years, Occu : Agri.,
4. Gangadhar S/o Digambar Devade,
Age : 40 years, Occu : Agri.,

All R/o : Naiknagar, Tq. & Dist. Nanded

.. Respondents
(Orig. Defendants)

...

Mr. A.D. Hande, Advocate for petitioners

Respondent no.1 - died

Mr. G.P. Shinde, Advocate for respondents no. 2 to 4

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CORAM : SUNIL P. DESHMUKH, J.
DATE : 11-02-2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally, by consent.

2. Petitioners are before this court being aggrieved by order dated 14-09-2012 passed by civil judge, junior division, Ardhapur, whereunder their application at Exhibit - 64 for bringing legal heirs left behind by deceased defendant no.1 on record, had been rejected.

3. After hearing learned counsel for parties, it appears that on appearance of defendants in the suit, defendant no.1 died in September, 2006 and his legal heirs i.e. defendants no. 2, 3 and 4 were already on record. A *pursis* in the counter claim had been filed by defendants no. 2, 3 and 4 – counter claimants showing themselves as well as two other persons as legal heirs of deceased defendant no. 1. Despite that, it appears this factual aspect had not fallen for consideration of the counsel and consequently, there had been inaction in bringing other two legal heirs on record in the plaint in the suit by present petitioners.

4. It further appears that subsequently there had been change in place of litigation and in the circumstances, despite there had been several intervening dates, it had not been realized till 2012.

5. After the matter had been transferred from Nanded to Ardhapur and notices were also received by petitioners. It was only at Ardhapur, this factual aspect has been noticed by counsel at Ardhapur and application accordingly had been preferred immediately.

6. Trial court while passing order impugned in present petition, though purports to refer to various dates, yet, ignored significant position that after the *pursis* had been filed in 2006 and same had gone unnoticed and, thereafter, the matter had been transferred to Ardhapur and at Ardhapur, counsel after taking stock of record, noticed the deficiency and had moved an application.

7. In this regard, it would be pertinent to refer to and rely on the guidelines of supreme court in the case of *Collector, Land Acquisition, Anantnag V/s. Mst. Katiji and others* reported in *AIR 1987 SC 1353*, paragraph no. 3 thereof reading, thus,

“ 3. The legislature has conferred the power to condone delay by enacting S. 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on ‘merits’. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in

mattes instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late;

(2) Refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that cause would be decided on merits after hearing the parties.

(3) "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hours delay, every seconds delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non deliberate delay.

(5) There was no presumption that delay is occasioned deliberately, or on account culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay in fact he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. "

as also, guidelines issued by supreme court under its decision, in the case of *Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy and others* reported in (2013) 12 Supreme Court Cases 649.

8. Having regard to that even otherwise, legal heirs of defendant no.1 were already on record, this application had been moved for adding the legal heirs. Pedantic approach in the circumstances will have to be eschewed. Inconvenience caused to defendants in the process, can be taken care of by imposing costs.

9. Having regard to aforesaid, writ petition is allowed. Impugned order dated 14-09-2012 passed by civil judge, junior division, Ardhapur at Exhibit – 64 in regular civil suit no. 11 of 2012 is set aside.

10. Application at Exhibit – 64 stands granted, subject to payment of costs of Rs.15,000/- (Rs. Fifteen Thousand). Costs be deposited at trial court at Ardhapur within a period of four (4) weeks from the date of receipt of this order, for its onward disbursal to the defendants.

11. Writ petition accordingly is disposed of. Rule is made absolute accordingly.

[SUNIL P. DESHMUKH]
JUDGE

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