

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

WRIT PETITION NO.8734 OF 2018

**BHAGIRATHIBAI RANGNATH DESHMUKH THROUGH GPA BHAUSAHEB
RANGNATH DESHMUKH
VERSUS
SURESH SAKHAHARI KHALKAR AND OTHERS**

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Advocate for the Petitioner : Shri Sadaphule Rajendra S..
Advocate for Respondents 1 and 2 : Smt.M.D.Thube-Mhase i/by Lex
Aquila.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th February, 2019

Per Court:

1 Heard the learned Advocates for the respective sides at length.

2 The Petitioner is aggrieved by the order dated 04.04.2018 passed by the learned Additional District Judge, by which, the application Exhibit 46 seeking condonation of delay of three years in bringing the legal heirs of the deceased Appellant Bhagirathibai (his mother) on record, has been rejected.

3 The learned Advocate for Respondent Nos.1 and 2 has strenuously opposed this petition. It is submitted that the delay is too

large and should not be condoned. In the alternative, it is submitted that, if this Court is inclined to entertain the petition, heavy costs be imposed.

4 The learned Advocate for Respondent Nos.1 and 2 relies upon the order passed by this Court on 06.12.2018 in Writ Petition No.7754/2018 (Aurangabad Bench) in the matter of ***Virbhadara Chanappa Shingare and others vs. Shivayya Virayya Swami***, to contend that this Court has imposed costs of Rs.25,000/- while refusing to condone the delay.

5 I have considered the application Exhibit 46 filed by the Petitioner in the light of the strenuous submissions and objections of Respondent Nos.1 and 2. The issue is as regards bringing the legal heirs of the deceased (Bhagirathibai) who has passed away on 27.01.2010.

6 Exhibit 46 indicates a strange contention by the Petitioner/ Applicant that he was not aware about the death of his mother. A lot of time was consumed for him to realize the demise of his mother and therefore, there was delay. Apparently, the said reason is a blatant lie. There are no circumstances indicated in Exhibit 46, as is rightly contended by Respondent Nos.1 and 2, as to whether, the Petitioner/ Applicant, who was the power of attorney holder for his mother, was residing miles away from his mother or was in employment elsewhere or had strained relations with his mother or that other close relatives suppressed the demise of his mother, due to which the delay has occurred. In the absence

of such circumstances, the Appellate Court has rightly concluded that the reasons cited are not believable.

7 Only one issue needs to be considered that, an immovable property is involved in the litigation between the parties. If the legal heir (the petitioner herein) of the deceased Bhagirathibai is not brought on record, he would have to suffer the judgment and decree of the Trial Court and his appeal would abate thereby, depriving him of any right to the said property. No doubt, the appeal is said to have been filed after a delay of six years and the delay is yet to be condoned.

8 Considering that a false reason has been cited by the Petitioner, pitted against an irreparable harm that would be caused if the legal heirs of the deceased Bhagirathibai are not brought on record, that I am of the view that heavy costs need to be imposed upon the Petitioner.

9 In view of the above and considering the law laid down in the matters of *Collector, Land Acquisition, Anantnag v/s Mst.Katiji*, AIR 1987 SC 1353 and *Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy*, (2013) 12 SCC 649, this Writ Petition is partly allowed. The impugned order dated 04.04.2018 is quashed and set aside. The application Exhibit 46 is allowed subject to the following directions :-

- (a) The Petitioner shall deposit an amount of Rs.15,000/- (Rupees Fifteen Thousand) in this Court on or before

05.03.2019. A receipt of such deposit shall be presented before the first Appellate Court on or before 11.03.2019.

- (b) The Petitioner will not pray for extension of time and if the amount as directed above is not deposited, this order shall stand recalled and this petition shall then stand dismissed without reference to the Court on 06.03.2019.
- (c) Only on the condition of depositing the above amount and placing the receipt on record before the Appellate Court, that the Appellate Court would permit the legal heirs of the deceased Bhagirathibai to be brought on record in Civil M.A. No.46/2008.
- (d) The amount deposited in this Court shall be withdrawn in equal proportion by Respondent Nos.1 and 2, who have assisted this Court in the hearing of this petition, without conditions.
- (e) Consequent to the compliance as directed above, the abatement order in Civil M.A. No.46/2008 would stand vacated.
- (f) Needless to state, this Court has not expressed any view about the delay caused in filing the appeal before the Appellate Court and the said Court shall deal with the said delay on its own merits.

- (g) Civil M.A. No.46/2008 shall be decided by the Appellate Court expeditiously and preferably on or before 30.09.2019.

kps

(RAVINDRA V. GHUGE, J.)