

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 CIVIL APPLICATION NO.10055 OF 2018
IN SAST/19956/2018

1. Wahidoddin s/o Naziroddin Kazi,
Age 68 years, Occupation Business,
2. Sajju @ Sajed s/o Wahidoddin Kazi,
Age 42 years, occupation Hotel Business,
3. Khalil s/o Wahidoddin Kazi,
Age 41 years, Occupation Business,
4. Basad s/o Wahidoddin Kazi,
Age 40 years, Occupation Business,

All R/o Kaij Tq. Kaij Dist. Beed.

...Applicants.

VERSUS

Naziroddin s/o Gulam Dastgir Kazi,
Died through his L.Rs.

1. Saloddin s/o Naziroddin Kazi,
Age 95 years, Occupation Agri.,
R/o Roja Mohalla, Behind Dargah,
Kaij Tq. Kaij Dist. Beed.
2. Shafiyoddin s/o Naziroddin Kazi,
Age 93 years, Occupation Agri.,
R/o Salegaon Tq. Kaij Dist. Beed.
3. Minajoddin d/o Naziroddin Kazi,
Age 75 years, Occupation Pensioner,
R/o Sadatnagar, Aurangabad.
Dist. Aurangabad.
4. Wahajoddin Naziroddin Kazi,
Age 78 years, Occupation Agri.,

R/o In Front of Office of Nagar
Parishad, Khureshi Mohalla, Kaij
Tq. Kaij Dist. Beed.

5. Anisoddin Naziroddin Kazi,
Age 70 years, Occupation Agri.,
R/o Bazartal, Salegaon
Tq. Kaij Dist. Beed.
6. Fayyumnisa Sahinmiya Shaikh,
Age 67 years, Occupation Household,
R/o Naziralibaba Dargah, Salegaon,
Tq. Kaij Dist. Beed.
7. Samiyoddin Naziroddin Kazi,
Age 65 years, Occupation Agri.,
R/o Bazartal, Salegaon
Tq. Kaij Dist. Beed.
8. Mannibegum Ahmedmiya Shaikh,
Died.

...Respondents

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Advocate for Applicants : Mr. Chate Vitthal M.
Advocate for Respondents : Mr. S. A. G. Qureshi.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 29-01-2019.

ORAL ORDER :

1. In view of order dated 14-01-2019, the learned advocate for the applicant submits that, he has got the instructions that, no legal heir has been left by respondent No.8.
2. Heard both the sides. Present application has been filed for getting delay of 277 days in filing the second condoned.

3. The applicants are the original defendants, they want to challenge the order of disposal of their first appeal by way of abatement and thereby the Judgment and decree dated 10-07-2017 in Regular Civil Appeal No. 61 of 2010 passed by learned District Judge -2, Ambajogai Dist. Beed, wherein the Judgment and decree in Regular Civil Suit No. 13 of 2000 passed by learned Civil Judge, Junior Division, Kaij Dist. Beed dated 30-03-2010 was under challenge. The said suit was filed for possession by original plaintiff, the predecessor of present respondents No.1 to 7. The said suit was decreed and the respondent No.1 i.e. Original plaintiff expired during the pendency of the appeal but the legal representatives were not brought on record and under the said circumstances, the appeal was disposed of as abated.

4. The applicants are contending that, they were unaware to the said order passed by the learned first Appellate Court. In fact they were also not aware about the name of the advocate who was holding brief for them in the Appellate Court. They are illiterate. They came to know about the disposal of their appeal only after they received notices in execution petition. It is stated that, the delay is unintentional. It is stated that, their vital rights are involved in the

house property, and therefore they have prayed for condonation of delay.

5. The application has been objected by filing affidavit-in-reply on behalf of respondents No.1 to 3 and 7. All the adverse circumstances have been denied by them. It is stated that, it is surprising to note that, how the applicants were not even knowing the name of the advocate to whom they had engaged. They were fully aware about the proceedings. In fact the appellant No.1 is the son of original plaintiff and they were residing in a same house. Therefore, they had the knowledge about the death of original plaintiff. It is stated that, no explanation for each and every day has been given. Since the father has now expired definitely the present applicant No.1 will get some share. Therefore, no prejudice will be caused if the delay is not condoned.

6. It will not be out of place to mention here that, both the learned advocates have made submissions in support of their contentions.

7. It is not in dispute that, the parties are coming from rural background. It is stated that, the applicants are illiterate, however it

is to be noted that, their occupation has been shown as business. That means, they are not that much illiterate as they want to pose. Definitely they were aware about death of original plaintiff. Taking into consideration the fact that, they are residing in the same village and that the original plaintiff was the father of present applicant No.1. As regards the claim of the applicants that they were not even knowing the name of their advocate at the first Appellate Court is concerned, it was tried to be submitted that, their trial Court advocate had entrusted the brief to the advocate at First Appellate Court which is at a distance. Even if the said fact taken into consideration, it appears that there is a lethargy on the part of the applicants to pursue the matter. Be that it may, the fact that is required to be considered is that, some of the parties are senior citizens. Taking into consideration the fact that, they are coming from rural background and the fact that original plaintiff had expired on 18-05-2014 and appeal was disposed of as abated on 10-07-2017, the facts are definitely then required to be considered. Under such circumstance taking a liberal approach the delay deserves to be condoned. However, the respondents who are contesting, are required to be compensated in terms of money. Hence following order.

ORDER

- 1) The application is hereby allowed.
- 2) The delay caused in filing second appeal is hereby condoned subject to deposit of cost of Rs.8,000/- (eight thousand) within 15 days from the date of this order in this Court.
- 3) After the deposit of the said amount, it be distributed to respondents No.1 to 3 and 7 equally. Thereafter the second appeal be verified and registered. It be put for consideration on 26-02-2019.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.