

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 26 OF 2018

IBRAHIMKHAN AJIKHAN QURESHI AND OTHERS
VERSUS
RASHEEDKHAN MAJEEDKHAN AND OTHERS

Advocate for Petitioner : Mr. G.N. Kulkarni.
Advocate for Respondent Nos. 1 to 5, 11 & 12 :
Mr. L.V. Sangeet h/f. Mrs. M.L. Sangeet.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 20.02.2019

PER COURT :

1. The appellants are aggrieved by the order passed by the learned Principal District Judge, Jalgaon, dated 06.04.2017, by which Civil Miscellaneous Application No. 103/2015, seeking condonation of delay of eight years, five months and nine days has been rejected.

2. Learned counsel for the appellants has strenuously canvassed the grounds for Appeal and submits that the impugned order deserves to be quashed and set aside.

3. Learned counsel for the respondent Nos. 1 to 5, 11 and 12 , relies upon the judgment of this Court in the matter of Nandkumar Kashinath Deorukhkar and others Vs. Standard Mill Company Limited and another [2006 (5) Mh.L.J. 668], to support his contention that when no grounds for condonation of delay are made

out, the Court cannot entertain such an application and rejection of such an application is justified. Further, reliance is placed upon the judgment of this Court in the matter of Kamalbai Narasaiyya Shrimal and another Vs. Ganpat Vithalrao Gavare [2007 (1) Mh.L.J. 807], which deals with the same issue that the grounds for condonation of delay must be spelt out clearly and distinctly, so as to make out a cause which can be termed as a sufficient cause for the purpose of condonation of delay.

4. The litigating sides belong to the Mohammedan community. Under Mohammedan law, unless the title holder of the property passes away, his LRs do not acquire any right to the property during his life time. The original respondent passed away during the pendency of the Regular Civil Appeal No. 58/2001 on 06.03.2007.

5. In the above backdrop, these appellants would acquire rights in the property on account of the demise of the original respondent. For about eight years and five months, these litigants have not moved the appellate Court. The only ground pleaded in the application is that their advocate was indifferent and did not convey the rejection of the Appeal.

6. This ground is apparently untrue, as the learned advocate for

the respondent points out that the information about the demise of the original defendant was supplied under Order XXII Rule 10 A of the C.P.C. Steps were expected to be taken as the advocate had supplied this information. Despite the same, no steps were taken, the Appeal stood abated and only when the original plaintiff initiated execution proceedings, that these appellants moved the restoration application, so as to defeat the execution proceedings.

7. I do not find any such reason in the pleadings before the appellate Court which would convince me to condone the delay of eight years and five months. The law laid down in *Nandkumar* (supra) and *Kamalbai* (supra) would squarely apply to this case.

8. Learned advocate for the appellants submits that if time of six months is granted, they would deposit substantial amount of costs. Learned advocate for the respondent is not agreeable contending that the original suit was lodged in the year 1978, bearing RCS No. 122/1978. He prays that finality to the litigation is necessary and after 41 years, the litigation should not be reopened and that to at the behest of the litigant who have slept for more than eight years.

9. This Appeal does not raise any substantial questions of law and hence, it is rejected. The Civil Application does not survive and

stands disposed of.

10. Learned advocate for the appellants prays that the protection granted to the appellants may be continued for a period of four weeks. Learned advocate for the respondent opposes the same.

11. In view of the above and considering the reasons assigned for rejecting this Appeal, the said request is rejected.

(RAVINDRA V. GHUGE, J.)

S.P.C.