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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

932 WRIT PETITION NO.10447 OF 2018

RUKMINIBAI KUSHABA RITHE AND OTHERS

... PETITIONERS

VERSUS

NIMALA SUBHASH PANCHAGAL AND ANOTHER

... RESPONDENTS

...
Advocate for Petitioners : Mr. Chandrant D. Biradar
Advocate for Respondent Nos.1 & 2: Smt. Surekha S. Biradar
...

CORAM : V.K. JADHAV, J.
DATED : 5th NOVEMBER, 2019

PER COURT :

1. Heard both the sides.
2. The petitioners are the original defendants. Being aggrieved by order passed below Exhibit-1, the petitioners have preferred Miscellaneous Civil Appeal before the District Court which is delayed for 40 days. The petitioners have thus filed an application i.e. Civil M.A. No.121 of 2017 for condonation of delay of the said period of 40 days. However, by impugned order dated 17.07.2018, the District Judge-6, Aurangabad has rejected the said application bearing Civil M.A. No. 121 of 2017.

(2)

3. Learned counsel for the petitioners submit that due to poverty and lack of knowledge, the petitioners could not prefer the appeal within time.

4. Learned counsel for the respondents submit that all the petitioners are agriculturist by occupation and they are not poor persons. Learned counsel submits that the false plea of lack of knowledge has been taken. The petitioners are fighting litigation since 2008. Furthermore, they had executed power of attorney in favour of some literate persons and as such, there is no question of lack of knowledge. Learned counsel submits that the District Judge-6, Aurangabad has rightly rejected the application. There is no merit in this writ petition. This writ petition is liable to be dismissed.

5. Learned counsel for the respondents in order to substantiate his contention placed reliance on following cases:

I) Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others reported in 2013 AIR SCW 6158.

II) Waghjai Devi Endowment Trust and Ors. Vs. Sanjiv Kashinath Vare and Others reported in 2007 (1) Bom. C.R. 671 (Bombay High Court).

(3)

6. It is well settled that there should be a liberal, pragmatic, justice-oriented and non-pedantic approach while dealing with an application for condonation of delay. In the instant case, the petitioners are agriculturist by occupation. They have shown lack of knowledge so also due to poverty, they could not prefer the appeal within a period of limitation. There is a delay of 40 days. The immovable property is at stake. Thus, considering the entire aspects of the case, I am inclined to condone the delay. Hence, the following order:

ORDER

- I. The writ petition is hereby allowed.
- II. The impugned order dated 17.07.2018 passed by the District Judge-6, Aurangabad below Exhibit-1 in Civil M.A. No.121 of 2017 is hereby quashed and set aside.
- III. Civil M.A. No. 121 of 2017 is hereby allowed.
- IV. The learned District Judge shall consider the Civil Miscellaneous Appeal on its own merits.

7. The writ petition is accordingly disposed off.

(V.K. JADHAV, J.)

Sam...