

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

WRIT PETITION NO. 8865 OF 2016

Nagnath Abasaheb Jadhav and others ... Petitioners

Versus

1. Ramesh Shankar Gulwe

Died through L.Rs.

1/1. Shashikala wd/o Ramesh Gulwe and others ... Respondents

....

Mr. Jayant R. Patil, Advocate for petitioners.

Mr. S. B. Ghute, Advocate for respondent Nos. 1/1 to 1/3.

....

CORAM : R. G. AVACHAT, J.

DATED : 30th SEPTEMBER, 2019

PER COURT :-

1. Heard learned counsel for the parties.

2. The challenge in this writ petition is to the order dated 21.04.2016, passed by the learned District Judge-1, Ahmedpur, rejecting application Exh.10 in Miscellaneous Application No. 15 of 2015.

3. Facts of the case :

The petitioners filed suit, being Regular Civil Suit No.58 of 2012 before the Court of Civil Judge, Senior Division, Ahmedpur. The suit was dismissed by the learned Joint Civil Judge, Senior Division, Ahmedpur, vide judgment and order dated 28.04.2015.

4. The petitioners proposed to prefer appeal thereagainst. There was 10 days delay in preferring the appeal. The petitioners, therefore, preferred appeal along with application for condonation of delay. The learned District Judge-1, Ahmedpur, vide order dated 19.01.2016, was pleased to allow the application of condonation of delay, subject to costs of Rs.700/- to be paid within seven days. The order states that, after payment of the costs, the appeal be registered, if found correct in other respects.

5. The petitioners could not deposit the amount of costs within time frame of seven days as directed by the District Judge-1, Ahmedpur, vide order dated 19.01.2016. The petitioners therefore preferred application Exh.10 on 21.04.2016 seeking permission of the learned District Judge-1 to deposit the amount. On hearing the other side, the learned District Judge-1, on 21.04.2016, pleased to pass the following order:

“Read application and say. Applicant's Advocate is absent when called out. Advocate for opponents have strongly opposed the application. The application for condonation of delay was allowed on 19.01.2016 granting time for seven days for depositing cost. Since 19.01.2016 till today for over three months applicants have failed to pay cost. No such undue liberty can be granted to the applicant to pay said cost, therefore, the objection taken by opponent is proper and correct and the request made in this application is rejected.”

6. The aforesaid order dated 21.04.2016 is under challenge in this writ petition.

7. Learned counsel for the respondents strongly objected for allowing this writ petition.

8. In my view, the learned District Judge-1, Ahmedpur ought to have been liberal in allowing application Exh.10. It was mentioned in the application that the applicant who was looking after the Court matters, fell ill and therefore, could not deposit the amount within the time frame. The learned District Judge-1 took hyper-technical view and rejected the application, causing a great injustice. In view of the above, I am inclined to allow the writ petition.

9. The writ petition is therefore, allowed and disposed of.

The order dated 21.04.2016, rejecting the application seeking permission to deposit costs, is hereby set aside. The said application Exh.10, is allowed. The petitioners to deposit the amount of costs within a period of thirty days from today. The appeal be registered.

[R. G. AVACHAT, J.]

SMS