

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

**CIVIL APPLICATION NO.10629 OF 2019
IN
REVIEW APPLICATION STAMP NO.26270 OF 2019
IN
SECOND APPEAL NO.924 OF 2005**

Kondiba Lahanu Shinde (died)
Through L.Rs. Gahaninath Kondiba Shinde and others

... Versus ...

Dhondiba Nagu Jagtap (died)
Through L.Rs. Sheshrao Dhondiba Jagtap and others

...

Mr. V.D. Salunke, Advocate for the applicants
Mr. V.D. Sapkal & Mr. U.S. Mote, Advocates for respondent Nos.1A to 1H
Mr. R.G. Hange, Advocate for respondent Nos.3A to 3G
Mr. R.A. Deshmukh, Advocate for respondent Nos.4A to 4D

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 09th OCTOBER, 2019

PER COURT :

1 Present application has been filed for condoning the delay of 24 days in filing review application.

2 The present applicants state that the Second Appeal bearing

No.924 of 2005 was decided by this Court on 26.04.2019. Their father-respondent No.2, in fact, expired on 20.08.2010 and though it was noted, there were no efforts to bring the legal representatives on record by the appellant. It is stated that the appeal proceeded ex parte and was also decided against dead person. The applicants had no knowledge about the pendency of the Second Appeal. One of the parties in the Second Appeal had filed review petition and in that petition also, the father of the present applicants was shown as one of the petitioners. Though the fact is, that their father had expired in the year 2010 itself, there was no Vakalatnama filed on his behalf, yet, the review was decided against him. The applicants heard the rumours in the village and then came to know that such a decision has been rendered against their dead father. Hence, they collected the documents and filed review petition. However, there is delay of 24 days, and on these grounds they prayed for condonation of delay.

3 The application has been objected by learned Advocate for respondent Nos.1A to 1H, on the ground that in fact, the applicants were having knowledge about the decision in Second Appeal. Special Leave Petition was filed before Hon'ble Supreme Court, challenging the said decision, however, the said Special Leave Petition as well as the order of review passed by this Court was also challenged before the Apex Court and

they both have been turned down. Therefore, it is another attempt by the applicants for depriving the appellants of the fruits of the decree.

4 Perusal of the record would show, that in the Second Appeal, when Civil Application No.8225 of 2010 was filed for bringing the legal representatives of respondent No.1 on record and the notice of that application was given to respondent No.2, it was returned with remark, that he is dead. Civil Application No.8225 of 2010 was allowed by this Court on 28.08.2013. However, it appears that thereafter there was no attempt to bring the legal representatives of respondent No.2 on record. The matter proceeded and the Second Appeal came to be allowed. Thereafter, the said decree was challenged before the Hon'ble Supreme Court in Special Leave Petition (Civil) No.21243 of 2019 and the order passed by this Court in Review Application (Civil) No.078 of 2019 dated 24.07.2019 was challenged in Special Leave Petition (Civil) No.21244 of 2019. However, both the Special Leave Petitions came to be dismissed by the Hon'ble Supreme Court on 02.09.2019. Interestingly, perusal of the petition filed before the Hon'ble Apex Court also shows that Kondiba i.e. the father of the present applicants was a party. The fact remains is, that Kondiba expired on 20.08.2010 and the present applicants have come up with the case, that they were having good knowledge about the proceedings and therefore, there is delay. Taking liberal

view and also the duration of the delay, the said delay deserves to be condoned. Accordingly, it is condoned. Application stands allowed and disposed of accordingly. Registry to verify and register the Review Petition.

(Smt. Vibha Kankanwadi, J.)

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