

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

Civil Application No. 11252 of 2017
(In Civil Application No. 12618 of 2013)
(In Second Appeal No. 0292 of 1988)

District : Latur

Syed Ahmedulla s/o. Shah Mohd.
Quadari,
Died through his L.Rs.,
Mustufa Quadri s/o. Syed Ahmadullah,
Age 55 years,
Occupation Labour,
R/o. Saheb Galli, Nilanga,
Taluka Nilanga, Dist. Latur
& others.

.. Applicants.

versus

Zubedabee w/o. Mohd. Quadri,
Died, through L.Rs. 3-A to 3-L
& others.

.. Respondents

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*Mr. M.S. Deshpande, Advocate, holding for
Mr. A.M. Dabir, Advocate, for the applicants.*

Application abated as against respondent no.2A.

*Mr. S.S. Choudhary, Advocate, for respondent
no.06.*

*Mr. S.M. Vibhute, Advocate, for respondents
no.11a and 12a.*

*Mrs. M.D. Thube (Mhase), Advocate, for
respondents no.11d, 11e, 11f, 11h, 11i, 12b,
12c, 12d, 12e, 12f, 13b to 13d.*

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving the
Order : 06th March 2019.**

**Date of pronouncing the
Order : 03rd May 2019.**

ORDER :

01. Present application has been filed to get the delay of 7072 days condoned in bringing legal representatives of respondent no.11-c on record.

02. Present applicants have filed Second Appeal bearing No. 462 of 1989 challenging the judgment and decree dated 17-03-1988 passed by learned District Judge, Latur, in Regular Civil Appeal No. 75 of 1982 arising out of judgment and decree passed in Regular Civil Suit No. 572 of 1973 by the learned Civil Judge (J.D.), Nilanga, on 31-03-1982. The respondents have also filed Second Appeal No.292 of 1988, challenging the judgment and decree passed in Regular Civil Appeal No.82 of 1982, dated 17-03-1988 against the judgment and decree passed in the same Regular Civil Suit No. 572 of 1973 by the learned Civil Judge (J.D.), Nilanga. Both the appeals have been admitted on substantial questions of law. The judgment and decree passed in both the appeals has been stayed and both the appeals are pending for final hearing. In the meantime, the learned

Advocate who was representing the appellants in Second Appeal No. 292 of 1988 could not notice the matter on board on 01-08-2013 and, therefore, this Court dismissed the second appeal in default on that day. The applicants have preferred C.A. No.12618 of 2013 for restoration of the second appeal and also to condone the delay in filing the said civil application. It is stated that in the meantime, non-applicant no.11-c expired on 28-12-1997. It is stated that after the demise of said respondent, the applicant no.03 who had, in fact, died on 10-06-2014 and the other applicants lost sight of the fact that they are required to inform death of a party to the Advocate and, therefore, the delay has been caused i.e. 7072 days in filing the civil application and, therefore, they have prayed for condonation of the same.

03. Heard learned Advocates appearing for respective parties.

04. Learned Advocate appearing for the applicants submitted that though there is delay, which is huge, yet, it can be seen that the parties are from rural area. There are many parties to the proceedings and, therefore, it was not possible for all of them to communicate the fact of death of one of them or the opposite side to the Advocate.

Further, the second appeal was admitted in 1988 itself and it is waiting for its turn for final hearing. There was no communication in between the applicants and the Advocate and, therefore, leniency be shown.

05. Per contra, learned Advocate appearing for respondents no.11-d, 11-e, 11-f, 11-h, 11(i), 12(b), 12(c), 12(d), 12(e), 12(f), 13-b to 13-d submitted that when parties are related, there was no question of information about death by one party to the other. They were knowing about the fact of death either of the applicants or of non-applicants. They were also in contact with their Advocate, when in fact, the second appeal itself was dismissed, in default and they had knowledge about the said dismissal on 01-08-2013 and their application for restoration was pending. Further, the record shows that the applicants are totally negligent in approaching with the matter. Each time there is delay or even appeal was dismissed in default. Then, again application for restoration is filed. Under such circumstance, the Court may not help them. Reliance has been placed on the decision in *Katari Suryanarayana & others Vs. Koppiseti Subba Rao & others* [AIR 2009 SC 2907], wherein it has been held, "*Different considerations arise in condonation of delay in filing application for setting aside abatement on condonation of delay in a suit and*

an appeal. Such an application should be considered liberally. But there are exception to rule of liberal approach. If the parties are neighbour, fighting over right to use a lane or they are related to each other, then the Court may decline to appreciate that appellants were not aware about death of respondent in question."

06. In the case of *Katari Suryanarayana's case (supra)*, reliance was placed on the decision in *Perumon Bhagwathy Devaswom, Perinadu Village Vs. Bhargavi Amma (Dead) by LRs. & others [(2008) 8 SCC 321]*, wherein the principles applicable for the purpose of considering applications for setting aside abatement were summarized, were reiterated and it was clarified that the Supreme Court in *Perumon Bhagwathy Devaswom's case (supra)* had brought about a clear distinction between a case where the parties had been living in immediate vicinity or were related to the Court or had issued notice on him informing the death of the respondent and in other cases and then it was observed in *Katari Suryanarayana's case (supra)*, that the appellants were neighbours and co-sharers and being relatives knowing the death of respondents no.02 and 03 therein. It was observed that *"It is difficult to conceive that the petitioners were not in touch with their learned advocates from 1999 to December 2006. If not every week, they are expected to contact their lawyers once in a year. Ignorance of legal consequence without something more would, in our opinion,*

be not sufficient to condone such a huge delay." The situation in this case is same. Therefore, definitely, the ratio in *Katari Suryanarayana's case (supra)* is applicable here. The delay caused in bringing the legal representatives of respondent no.11-c on record cannot be condoned as the applicants have failed to prove sufficient and reasonable cause.

07. The delay is of 7072 days. Definitely, it is huge and inordinate. As aforesaid, when this application was filed, the earlier applications right from 2002, to bring the legal heirs on record were pending. The second appeal was already dismissed in default and then application for restoration is pending. Under such circumstance, the applicants were expected to be diligent. Though in this case, respondent no.11-c had expired, she was related to the applicants and, therefore, they had the knowledge about her death. Now, all of a sudden, after so many applications filed for bringing legal representatives on record, the applicants are coming with a case that they were not having knowledge about bringing the legal representatives of deceased within stipulated period of 90 days. In this case, they had contended that applicant no.03 was looking after the application and he had expired on 10-06-2014 and the fact of

death of respondent no.11-c was not informed to the Advocate. This is, in fact, an act of negligence. Important point to be noted is that by the time present application was filed, almost all the original appellants had expired and their legal representatives are stated to be looking after the proceedings. There are so many legal representatives. But then it appears that they were interested in throwing the responsibility of looking after the matter on another in order to take advantage and get the delay condoned on that ground, which cannot be allowed. Therefore, decision in *Katari Suryanarayana's case (supra)* is applicable and it can be said that there is absolutely no sufficient and reasonable ground shown by the applicants to condone the delay.

08. For the above said reasons, following order is passed :-

C.A. No.11252 of 2017 is hereby rejected.

09. List the other applications for consideration on 19th June 2019.

(Smt. Vibha Kankanwadi)
JUDGE

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