

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 14950 OF 2018

Ali Ahmed Azimoddin Tamboli (Died through
LRs) ...Applicants

Versus

Maheboob Shaikh Ajmoddin Tamboli & Ors. ...Respondents

.....
Mr. G. R. Syed, Advocate for Applicants.
.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04-01-2019.

ORDER :

01. Present application has been filed by the original defendants / applicants for getting the delay of 2574 days in filing second appeal condoned.

02. The applicants intend to challenge the Judgment and decree passed by learned District Judge-1, Ahmedpur, Dist. Latur in R. C. A. No. 122 of 2011 (old No. 82 of 2006) dated 17.7.2011 thereby dismissing the appeal preferred by the present applicants and then confirming the Judgment and decree passed by the learned Civil Judge Senior Division, Ahmedpur, Dist. Latur in R. C. S. No. 242 of 2006 dated 28.6.2006.

03. The applicants have contended that though the impugned Judgment and decree came to be passed on 7.7.2011, they had applied for the certified copy of the same on 23.3.2018. It is stated that original defendant No. 1-Ali Ahemad Ajmoddin Tamboli used to look after the proceedings before the Court and he was fully aware about the matter. He expired on 2.12.2017 and thereafter, the present applicants, who are his legal representatives came to know about the decision. Therefore, the said delay is unintentional. The substantial questions of law are involved. The delay has arisen due to the lack of knowledge and therefore, the liberal approach is required to be taken to condone the delay. It is also stated that most of the applicants are illiterate and some of them are pardanashin ladies.

04. It is not even necessary to issue notice to the other side.

05. Heard learned Advocate Mr. G. R. Syed appearing for the applicants. The reason that has been tried to be given is that the present applicants were not aware about the decision of dismissal of the appeal since original defendant No. 1 was looking after the matter. Even if this fact is taken as it is, it is to be noted that the

impugned Judgment and decree came to be passed on 7.7.2011 and said defendant No. 1 Ali Ahemad expired on 2.12.2017. Absolutely no reason has been mentioned as to why original defendant No. 1 had not taken any kind of steps immediately after the impugned Judgment and decree was pronounced. In other words there is absolutely no explanation for the delay that has been caused since July 2011 till 2.12.2017. It is to be noted that it is not pleaded as to how Ali Ahemad expired. If we peruse the Judgment of the learned Appellate Court, Ali Ahemad was shown as aged 32. It is not the case of the applicants that he died suddenly. In fact other defendants were canvassing for their own rights independently. Though even if it is accepted that Ali Ahemad was also looking after the matter on their behalf, yet, at least other defendants are presumed to have knowledge about filing of such appeal and then they could have made enquiry as to what has happened to the decision. Merely by making omnibus statement that he was looking after the matter, the responsibility of the other defendants does not extinguish. They have not come with the case that they were also not aware about and Ali Ahemad never told them about the decision of the appeal. Going backwards, it can also be stated that there is no pleading to the effect

that the Ali Ahemad was not aware about the decision of the said appeal. Therefore, there is absolutely no reason given explaining the delay of about 6 years and therefore, even after taking into consideration the facts liberally case is not made out to condone the delay. Hence, the application is rejected.

[SMT. VIBHA KANKANWADI]

JUDGE

Dahibhate/-