

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

Civil Application No. 0937 of 2018
(In Second Appeal No. 0522 of 2014)

District : Latur

Somnath s/o. Baswanappa Tondare
(Died), through his legal heirs :

1. Smt. Asha w/o. Somnath Tondare,
Age : 52 years,
Occupation : Household.
2. Swati d/o. Somnath Tondare,
Age : 31 years,
Occupation : Household.
3. Jyoti d/o. Somnath Tondare,
Age : 29 years,
Occupation : Advocate.
4. Rajkumar s/o. Somnath Tondare,
Age : 26 years,
Occupation : Education.
5. Soniya d/o. Somnath Tondare,
Age : 24 years,
Occupation : Advocate.
6. Sachin s/o. Somnath Tondare,
Age : 22 years,
Occupation : Education.

All r/o. Vaibhav Nagar,
Latur, Taluka & Dist. Latur.

.. Applicants

versus

1. Babu s/o. Baswanappa Tondare,
Age : 55 years,
Occupation : Service.

... Contd.

2. Sau. Surekha w/o. Babu Tondare,
Age : 52 years,
Occupation : Household.

Both r/o. Borsuri,
Taluka Nilanga,
District Latur.

.. Non-applicants.

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*Mr. Ravi Khandebharad, Advocate, holding for
Mr. V.D. Salunke, Advocate, for the applicants.*

*Mr. Nitin Telgaonkar, Advocate, holding for
Mr. N.V. Gaware, Advocate, for non-applicants
no.01 and 02 (caveators)*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 09TH JANUARY 2019

ORAL ORDER :

01. Present application has been filed for bringing legal representatives of deceased Somnath, the sole appellant, and a prayer is also made stating that if there is any delay in filing the civil application, then it should be condoned.

02. It has been contended that deceased Somnath had preferred second appeal challenging the judgment and order passed by the Ad hoc District Judge-1, Latur, in Regular Civil Appeal No. 53 of 2012. During pendency of the appeal, Somnath expired on 26.10.2016. It is stated that, since Somnath was looking after the matter, the applicants had no knowledge of the pendency of the second appeal. They

came to know in September 2017, when they received call from their Advocate seeking instructions. It is stated that, they had applied for legal heir certificate and thereafter after receipt of the same, they have filed the application.

03. Heard learned Advocate Mr. Khandebharad, holding for learned Advocate Mr. V.D. Salunke for the applicants. So also, heard learned Advocate Mr. Telgaonkar, holding for learned Advocate Mr. N.V. Gaware, for non-applicants no.01 and 02 (caveators). Both of them have argued in support of their respective contentions.

04. At the outset, it is required to be stated that the application is not happily worded. The delay has not been computed by the applicants and it is not specifically stated that the said delay be condoned. The wording used 'delay if any be condoned' cannot be said to be proper use of the words. Another fact that is also required to be considered is that, according to the applicants themselves, they came to know about pendency of the Second Appeal in September 2017. However, present application has been filed on 06-11-2017. They have not explained why further delay around two months has been caused. It cannot be forgotten further that the proposed applicants no.03 and 05 are advocates. Therefore, it is hard to believe that they had no

knowledge about the second appeal filed by their father. Further it is stated that, the applicants had applied for legal heirs certificate and upon receipt of the same, they have filed the application. However, they have not produced the heirship certificate, if at all they had secured. What they have produced is a copy of the application filed by them in Civil Misc. Application No. 86 of 2013 filed before District Judge-2, Latur. That application appears to be filed under Order XXII Rule 2 of the Code of Civil Procedure, 1908. What order was passed on that application is not clarified by the applicants. The suit was filed by Somnath for declaration and perpetual injunction. Even after considering all these hurdles, taking into consideration the fact that the applicants are fighting for their rights which now they have got through deceased Somnath, liberal approach is required to be taken and the delay deserves to be condoned. However, at the same time, respondents - non-applicants are required to be compensated in terms of money.

05. Hence, the following order :-

(a) The application is hereby allowed.

(b) The delay caused in bringing legal representatives of the sole appellant is hereby

condoned, subject to deposit of costs of Rs. 4,000/- [Rupees four thousand] to be deposited in this Court within 15 days from the date of this order. Upon deposit of the said amount, it be disbursed to the respondents equally.

(c) After deposit of the amount, as aforesaid, amendment of bringing legal representatives of deceased Somnath, on record, be carried out.

06. Place the second appeal as well as application for interim relief for consideration on 06th February 2019.

(Smt. Vibha Kankanwadi)
JUDGE

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