

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

Civil Application No. 14906 of 2018
(In Civil Application No. 15960 of 2015)
(In Second Appeal Stamp No. 32565/2015)

District : Jalgaon

1. Shrimati Taibai alias Mirabai
d/o. Chavdas Sonawane,
Age : 55 years,
Occupation : House work,
R/o. Nhavi Darwaja, Faizpur,
Taluka Yawal, Dist. Jalgaon.
 2. Shrimati Marabai w/o. Shankar Koli,
Age : 61 years,
Occupation : House work,
R/o. Kingaon, Taluka Yawal,
District Jalgaon.
 3. Smt. Latabai w/o. Prakash Chaudhary,
deceased through L.Rs. :
 - 3.1] Uday Prakash Patil,
Age : 35 years,
Occupation : Labour,
R/o. Baliram Peth, Jalgaon,
Taluka & Dist. Jalgaon.
 - 3.2] Sau. Sangita Mahendra Patil,
Age : 33 years,
Occupation : Household,
R/o. Baliram Peth, Jalgaon,
Taluka & Dist. Jalgaon.
- .. Applicants.

versus

1. Maharashtra Shashan.
2. The Tahsildar, Yawal,
Taluka Yawal,
District Jalgaon.

3. Smt. Marabai w/o. Chavdas
Sonawane
(Dead)
D/H are respondents no.4 to 8.
4. Smt. Rajubai Chavdas Sonawane,
Age 52 years,
Occupation : House work,
R/o. Vadhode Pragne, Yawal,
Taluka Yawal, Dist. Jalgaon.
5. Smt. Janabai Devidas Koli,
Age : 47 years,
Occupation : House work,
R/o. Yawal, Taluka Yawal,
District Jalgaon.
6. Smt. Kalpana Santosh Koli,
Age : 45 years,
Occupation : House work,
R/o. Chincholi, Tal. Yawal,
District Jalgaon.
7. Smt. Asha w/o. Ramesh Koli,
Age : 39 years,
Occupation : House work,
R/o. Chincholi, Tal. Yawal,
District Jalgaon.
8. Smt. Shobha w/o. Pundlik Koli,
Age : 37 years,
Occupation : House work,
R/o. Lahan Waghode,
Taluka Raver,
Dist. Jalgaon.
9. Lilabai Bhaskar Patil,
Age : Major,
Occupation : Household,
R/o. Village Viravali,
Taluka Yawal, Dist. Jalgaon.

.. Respondents.

.....

*Ms. Seema T. Pawar, Advocate, holding for
Mr. Ajay G. Talhar, Advocate, for the applicants.*

*Mr. S.M. Ganachari, Advocate, for respondents
no.01 and 02.*

Mr. Mangesh G. Patil, Advocate, for respondent no.09.

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 29TH MARCH 2019

ORAL ORDER :

01. Present application has been filed to bring the legal representatives of applicant no.03 on record and to get the delay of 443 days in bringing those legal representatives on record, condoned with recalling of order dated 31-10-2018 regarding abatement of the appeal.

02. The applicants are the original appellants who have filed Second Appeal Stamp No. 32565/2015. They want to challenge the judgment and decree passed in Regular Civil Appeal No. 638 of 2014 by learned District Judge-1, Bhusawal, District Jalgaon, dated 09-12-2014. They had challenged the judgment and decree passed in Regular Civil Suit No. 372 of 2000 dated 29-08-2007 by 4th Joint Civil Judge (Senior Division), Jalgaon, in the said appeal. The suit was filed by the appellants for declaration and partition.

03. It is stated, that after hearing the applicants, this Court has issued notices to respondents on delay condonation application (delay caused in filing second appeal) on 18-12-2015. But, in the meantime, applicant no.03 expired on 09-06-2017. The applicants had contacted the Advocate and had brought the fact to the notice of the learned Advocate. It was informed to the applicant, that the legal representatives of deceased applicant no.03 are required to be brought on record. Therefore, copy of death certificate of applicant no.03 was collected. However, there was delay in filing application to bring the legal representatives of deceased applicant no.03 and in the meantime, this Court passed an order on 31st October 2018, disposing of the application as abated. It is stated that the delay is unintentional. The applicants were the sisters *inter se*. They were residing at different places and there was no proper communication between them and their Advocate. It is stated that the delay is unintentional and it was beyond the control of the applicants. Hence, the application is filed.

04. The application has been strongly objected by learned Advocate appearing for respondent no.09 as well as learned Assistant Government Pleader appearing for respondents no.01 and 02. Both of them have submitted that the delay has not been properly explained, much less, sufficiently and the reason is

not convincing. The deceased was the sister and as per the application itself, it can be gathered that the learned Advocate who was representing the applicants, had given intimation to them that they are required to file application; still they have not taken steps immediately. The delay of 443 days is huge and inordinate. Even after construing it liberally, it cannot be said that the reason given is sufficient and reasonable.

05. It appears that Civil Application No. 15960 of 2015 has been filed by the present applicants to get delay of 209 days condoned in filing second appeal. In the said application, notices were issued to the respondents. It appears that much time has been consumed for service of notice to the respondents and also the fact was that the respondent no.03 had expired. But then in the title clause itself, it was stated that the heirs of deceased respondent no.03 are the respondents no.04 to 08. Respondent no.09 came to be added by order of this Court dated 12-02-2016 and 02-12-2016. Thus, it can be seen that the matter used to be on board and time and again some or the other orders have been passed. However, only on 13th August 2018, statement was made for the first time by the learned Advocate for the appellants, that instructions have been received to the effect that the applicant no.03 has expired.

06. In this application, the applicants have come with a case that after applicant no.03 expired on 09-06-2017, they had contacted the Advocate and information about death of applicant was immediately given. It was also told by the learned Advocate for the applicants that it is necessary to bring legal representatives of applicant no.03 on record immediately. Now, statement is also made that after getting the said information, applicants filed application to bring the legal representatives on record. But then record shows that the certified copy of death certificate was obtained on 21-07-2017; yet, the application has been filed on 23rd November 2018, that means, almost after about 16 months. When the fact was, as per the applicants, informed to the learned Advocate appearing for them immediately after death of applicant no.03 somewhere around June or July 2017 and in the meantime till 13-08-2018 the matter was on board; orders were passed, yet, learned Advocate did not bring the fact of death of applicant no.03 to the knowledge of the Court. Here, it comes the *bona fides*. If the applicants had informed the said fact to Advocate and the learned Advocate had given them advice, they ought to have acted swiftly.

07. Learned Advocate appearing for the applicants has relied on decision in *Collector, Land Acquisition, Anantnag Vs. Katiji* [AIR 1987 SC 1353], wherein it was observed that the Court should be liberal in

their approach while dealing with application for condonation of delay. Further reliance has been placed on decision in *Ashok Balaji Ratan Vs. Nagpur Improvement Trust, Nagpur* [2004(3) Mh.L.J. 659], wherein some observations in respect of what would be the consequence of not condoning the delay were made. The legal position cannot be denied, that explanation of day-to-day basis is not required. But then, when there is inordinate and huge delay, then there has to be some plausible reason. When the applicants had received the knowledge about death of applicant no.03 (Legal representatives of applicant no.03 themselves are applicants in this case), then they obtained the death certificate within reasonable time, received legal opinion as to what should be done in such case, but then did not do anything in pursuant to the said legal advice.

08. Applicants no.01 and 02 are the sisters of deceased applicant no.03. They are aged 55 years and 61 years, respectively. Their occupation is stated to be household and now orally it has been tried to be submitted that taking into consideration their age and the occupation, liberal approach be taken. First and the foremost fact is that this reason has not been included in the application. Secondly, though they are aged 55 years and 61 years, respectively and doing household work, they had approached the Advocate within time. They got the legal advice in

time. Then under such circumstance, whether the delay of 443 days can be said to be justified for them to file the application. Therefore, from any angle, even after taking into consideration the decision of the above said citations, taking liberal approach, it cannot be stated that the delay has been properly and reasonably explained. At the cost of repetition, it can be said that the death certificate was obtained within time and the legal advice was also sought. The only act that was remained was to file an application. Then for filing that application i.e. similar to the present, why it would have taken 18 to 19 months. Therefore, with this background and with these facts, it cannot be stated that grounds are made to condone the delay. Further, even for filing the second appeal, there is delay. This is the act of negligence and, therefore, a negligent litigant cannot be protected.

09. In the result, the civil application is hereby rejected. There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

.....