

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

910 CIVIL APPLICATION NO.14175 OF 2019
IN
SECOND APPEAL NO. 385 OF 2012

SK. YUSUB SK. HABIB DIED LRS. SHAIKH JAVED SHAIKH
YUSUB AND OTHERS
VERSUS
SATWA DAGDU KALANE AND ANR

Mr. Amit a. Mukhedkar, Advocate for the applicants
Mr. Y. K. Delmade, Advocate h/f Mr. G. P. Shinde, Advocate for
respondent No. 1

CORAM : S. M. GAVHANE, J.

DATE : 18-12-2019

P. C.

. Applicants who are legal representatives of the deceased appellant/ defendant who died on 01-12-2013 moved this application to bring them on record and to condone the delay of 2089 days caused in filing this application by setting aside the order of abetment of appeal against the deceased appellant.

2. Learned counsel for the applicants submitted that sole appellant/defendant died on 01-12-2013. After this fact was brought to the notice of the court, the Advocate appearing for the appellant had sought time to take necessary instructions in the matter. It is submitted that the family members of the deceased appellant were not aware of the present proceeding and the

proceeding before the trial court as well as appellate court and in the month of November, 2019 son of the deceased appellant found certain documents relating to the present matter. Thereupon, he approached the local Advocate who contacted the counsel representing the deceased appellant in the present matter. It was death certificate of the deceased appellant and then this application was filed. According to learned counsel, in the above circumstances, delay has been caused in moving the application to bring on record the LRs of the deceased appellant. Said delay is accidental and therefore, as there is sufficient ground to condone the delay, same may be condoned and abetment of appeal be set aside by allowing the application to bring on record LRs of deceased appellant.

3. Learned counsel appearing for the respondents has filed reply and same is taken on record. Referring the reply filed on behalf of respondents learned counsel submitted that the fact of the death of the deceased appellant was brought to the notice of learned counsel appearing for the deceased appellant on 13-10-2015 and as such LRs of the deceased appellant have moved application requesting to bring them on record to prosecute the appeal and intentionally they have delayed to move this application for delaying the present matter. Thus, according to the learned counsel abetment of appeal may not be set aside, delay may not be condoned and application moved by the applicants to bring them on record be dismissed. Learned counsel also submitted that in the trial court also the deceased appellant/ defendant though appeared allowed to proceed suit without written statement and thus

according to him there is no sufficient cause to condone the delay and to consider the present application.

4. Second appeal has been filed by the appellant/ original defendant against the order of District Judge, Nanded rejecting the delay condonation application to condone the delay caused in filing the appeal against the decree for possession. It appears that deceased appellant was running tea stall in the suit property. Ages of the applicant Nos. 1-A to 1-D who are sons of the deceased appellant are between 18 to 24 years and it appears that applicant No. 1 is widow of deceased appellant.

5. Considering the submissions made by the learned counsel appearing for the applicants and the grounds of delay mentioned in the paragraph No. 2 of the application referred earlier and submissions of the learned counsel appearing for the applicants and the principles which are required to be considered while considering the application for setting aside the abetment given by the Apex Court in the case of *Perumon Bhagvathy Devaswom Perinadu Village Vs Bhargavi Amma (Dead) by L.Rs. And ors AIR 2009 SC (Supp) 886*, I am of the view that it is just to condone the delay caused in moving the application to bring on record the LRs of the deceased appellant and to set aside the abetment of the appeal having regard to the nature of the decree for possession passed

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against father of the applicant Nos. 1-A to 1-D and husband of applicant No. 1 by allowing the application. Therefore, following order is passed.

ORDER

- I] Application is allowed in terms of prayer clauses (B) and (C).
- II] Legal representatives of appellant No.1 be brought on record and necessary amendment to that effect be carried out in the cause title of second appeal within two weeks.

[S. M. GAVHANE, J.]