

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO. 3570 OF 2017
IN SECOND APPEAL NO. 98 OF 1991
WITH
CIVIL APPLICATION NO. 3561 OF 2017
IN SECOND APPEAL NO. 97 OF 1991
WITH
CIVIL APPLICATION NO. 3558 OF 2017
IN SECOND APPEAL NO. 96 OF 1991**

Dhondiram S. Oza (Died through LRs) ...Applicants

Versus

Bhagirath Shrikisan Oza (Died through LRs) ...Respondents

.....

Mr. Hemant Surve & Mr. Kshitij Surve, Advocates for Applicants.

Mr. S. K. Shinde, Advocate for Respondent No. 1A, 1B.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 08-02-2019.

ORAL ORDER :

01. All these applications have been filed to bring the legal representatives of sole respondent on record. However, there is delay of 1081 days and therefore, there is prayer for condonation of delay also.

02. The second appeals were filed in the year 1991 and they are admitted. It is stated that during pendency

of the second appeal the sole respondent expired on 1.10.2013. It is also stated that the appellants and respondents were relatives and however, they came to know about the death of respondent recently. The right to sue survives and therefore, it is stated that it is necessary to bring the legal representatives on record. It is stated that the delay is unintentional and it is occasioned due to technical reason only.

03. The applications have been objected by the proposed respondent No. 1A and 1B on the ground that the deceased respondent was the real brother of original appellant No. 1. The applicants are the legal representatives of the original appellant. Therefore, they are near relatives. Under such circumstance, it is highly impossible that they would not have come to know about the death of the respondents immediately. It is stated that there is inordinate delay.

04. Heard learned Advocate Mr. Surve appearing for the appellants. Apart from the contents of the application, he relied on the decision in **Keshao Kawadu Maral & Anr. V/s State of Maharashtra and Ors., (2005 (4) LJSOFT 73)** wherein it has been observed by the Division Bench of this Court that the delay in taking out the application has to be computed from the knowledge of the

death of party. In that case, the appellants had no knowledge and as soon as they acquired the knowledge they took out application to bring the legal heirs on record and in that case the said aspect regarding knowledge was not seriously disputed by the respondents. Under those circumstances, the delay was condoned.

05. Per contra, the learned Advocate Mr. S. K. Shinde for respondent No. 1A and 1B relied on the decision in **Brijesh Kumar & Ors. V/s State of Haryana & Ors., (2014) 11 Supreme Court Cases 351**) wherein it has been held that :

10. The Courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However, the Court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay

is not properly, satisfactorily and convincingly explained, the Court cannot condone the delay on sympathetic grounds alone.

11. It is also a well-settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the Court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

06. It is to be noted that the fact is not in dispute that original appellant and respondent were real brothers. It appears that appellant expired and his legal representatives have been brought on record. Now, respondent has also expired on 1.10.2013. The second appeals have been filed in the year 1991 and they have been admitted. They are yet to come up for final hearing. Taking into consideration, the developments in the past, it appears that it was earlier dismissed in default and then again restored. However, as on today they are waiting their turn to come. Now, the question is as regards condonation of delay. No doubt, it is huge. It

has been disputed that it is also inordinate. As regards knowledge of death of respondent is concerned, definitely atleast those legal representatives of the appellant, who are residing in the village would have come to know about death of respondent. It can be seen from the record that appellant No. 1B is only residing at village, Warur Bu. Tq. Shevgaon, Dist. Ahmednagar. Appellant No. 1A has also died and she is survived by 1B to 1E. Appellant No. 1C, 1D and 1E are residing at Ahmednagar and Jalna district respectively. Taking into consideration this fact when only one of the heir was residing in Warur, where respondent had expired, it can be taken as a reasonable ground for condonation of delay stating that they had no knowledge or came to know about the same recently as contended. The ratio laid down in both the abovesaid authorities can not be disputed. However, at the same time satisfactory explanation of the delay is a relative term and in **(2014) 11 Supreme Court Cases 351**) itself the Honourable Supreme Court has held that the Court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. The delay deserves to be condoned. However, at the same time, the inconvenience that has been caused to the respondents, who are contesting the application deserves to be compensated

in terms of money.

07. Hence, following order;

ORDER

(i) All the 3 applications are allowed subject to deposit of cost of Rs. 30,000/- within 15 days from the date of this Order in this Court.

(ii) On the deposit of the said amount, the said amount be given to respondents No. 1A and 1B equally in respect of each of the application.

(iii) Necessary amendment be carried out within the aforesaid period.

(iv) Stand over to 22.2.2019.

[SMT. VIBHA KANKANWADI]

JUDGE

Dahibhate/-