

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.8409 OF 2018
IN WP/3479/1989

VISHNU BHAGWAT GOSAVI DIED THROUGH LRS
VERSUS
RUKHMINIBAI KRUSHNAJI ROKADE AND OTHERS

Mr.S.D.Kulkarni, Advocate for the applicants.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 16/08/2019

PER COURT :

1. By this civil application, the LR's of the original petitioner pray for condonation of 25 years and 9 months delay caused in filing this civil application and further pray for restoration of the WP No.3479/1989 (Old Bombay No.4233/1987), abated on 17/01/1992.
2. The learned Advocate for the applicants submits as under ;-
 - [a] The writ petition was filed on 30/06/1987.
 - [b] Ad-interim relief was granted in terms of prayer clause "B".
 - [c] The sole petitioner passed away on 06/05/1990.
 - [d] A civil application was filed on 24/06/1990, which was refused registration on account of objections and an affidavit having not been filed.

[e] CA Stamp No.8344/1991 was filed for setting aside the order of the learned Registrar dated 24/06/1991 and for seeking restoration of the civil application filed on 24/06/1990. Same is pending for 28 years.

[f] The petition was then transferred to Aurangabad.

[g] On 17/01/1992, the petition was abated due to the death of the sole petitioner.

[h] The learned Advocate claims to have filed his Vakalatnama on behalf of the LR's of the sole petitioner on 15/06/1992.

[i] CA Stamp No.34540/2017 was filed in July 2014 seeking condonation of delay and CA No.34535/2014 was filed for bringing the LR's of respondent No.9 on record.

[j] CA Stamp No.34536/2014 was filed for seeking condonation of delay and CA Stamp No.**34537/2017** was filed for bringing LR's of deceased respondent No.2 on record.

[k] The learned Advocate gathered knowledge in 2017 that the original record is destroyed and therefore a freshly typed copy of the main writ petition alongwith the annexures were filed on record.

[l] Though the petition is posted today with the remark "*notice to respondent No.1 is returned unserved as reported to be dead*", this civil application for restoration of the writ petition is ripe for hearing and can be taken up for adjudication.

[m] The delay in the proceedings may not be scrutinized strictly since the issue is with regard to an immovable property.

[n] In admitted petitions, the Court should normally

appreciate that the litigants are aware that the proceedings would be ripe for final hearing after about 15-20 years and therefore death of litigants is brought to the notice of the representing Advocate only after the matter is listed in the warned list or is taken on board for a final hearing.

3. Despite service of Court notice on respondent Nos. 4, 5, 6 and 12, the learned Advocate is absent. Respondent Nos. 7 and 8 have been deleted from the proceedings.

4. The issue before this Court is as to whether the writ petition of 1987 deserves to be restored after 32 years in view of the abatement order dated 17/01/1992, which is about 27 years ago.

5. The record reveals that the petition was admitted and ad-interim relief was granted. After transferring the petition to Aurangabad, in view of addition of the Ahmednagar District to the jurisdiction of the Aurangabad Bench, notices have been issued to the parties. After the notices were issued, the appearances have been filed by the respondents. The Office report indicates that the notice of the Court was attempted to be served on the petitioner and the same has been returned with the remark that the petitioner has passed away. This information was given by the LR's. The Farad

Sheet indicates that the service was completed and probably the relatives of the deceased petitioner have informed the Bailiff that the petitioner has died. No appearance was entered immediately pursuant to the notice and this Court therefore passed an order on 17/01/1992 that the petition stands abated.

6. The Vakilpatra was filed by the learned Advocate on 15/06/1992 on behalf of the LR's. It is tried to canvass that the Clerk of the learned Advocate used to visit the writ section to find out the status in the matter and the office kept on saying that the file is not traceable. I find the said contention to be unsustainable for the reason that the petition was abated on 17/01/1992 and if the vakilpatra was filed on 15/06/1992, the petitioner's LR's should have collected information about the stage in the writ petition.

7. A civil application for seeking condonation of delay to bring the LR's of deceased respondent No.9 was filed in July 2014. One civil application is also filed in 2017 for bringing the LR's of deceased respondent No.2 on record.

8. It requires no debate that in such matters, the Court has to consider such delay liberally, provided there are good grounds cited

which can be termed as being a reasonable explanation for seeking condonation of delay of about 26 years. I find that after the vakilpatra was filed in June 1992, the first civil application was filed for bringing the LR's of respondent No.9 on record was filed in July 2014. A Court cannot be insensitive to the rigours of litigation being suffered even by the respondents notwithstanding the fact that some have appeared in the matter and their Advocate is absent today.

9. Issue would be as to whether the Law should assist a sleeping litigant. I do not find it to be a difficulty for any Advocate, after filing the Vakilpatra, to find out whether the Vakilpatra has been attached to the petition, which is pending or whether it is attached to a petition, which is already disposed off. These records are readily available with the Writ Section of the Court. For 22 years, the applicants have been resting in peace on the belief that the Advocate has filed the vakalatnama in June 1992 as if they have nothing more to be done in such proceedings. The matter is not attempted to be circulated after the vakilpatra is filed. The civil application filed in 1992 is also rejected, as there were serious legal deficiencies.

10. In view of the peculiar facts as above, I do not find that the delay of 25 years and 9 months can be condoned in the absence of

sound reasons.

11. As such, this civil application is rejected.

(Ravindra V.Ghuge, J.)