

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 567 OF 2019
WITH
CIVIL APPLICATION (St.) No. 35195 OF 2018
WITH
WRIT PETITION No. 6490 OF 2018

Gulab Bhimaji Kale & Ors. ... Petitioners
Vs.
Ramchandra Baburao Kale,
(Deceased through LRs) & Ors. ... Respondents

Mr. Sagar M. Kursija, for the Petitioners.
None for the Respondents.

CORAM : M. S. SONAK, J.

DATE : MARCH 14, 2019

P.C.:

1. Civil Application (St.) No. 35195 of 2018 is not on board. Upon mentioning, the same is taken on board.
2. Respondent No.1 is reported to have expired. The civil applications filed for condonation of delay, and for bringing legal representatives of respondent No.1 are allowed. Necessary amendment to be carried out forthwith. Civil Application (St.) No. 35195 of 2018, and the Civil Application No. 567 of 2019 are accordingly disposed of.

3. Heard Mr. Sagar Kursija, learned counsel for the petitioners in the main petition. He submits that the petitioner had shown sufficient cause for delay of 15 months and 17 days in instituting application for restoration of the appeal which come to be dismissed for default. He submits that the petitioner were under bonafide of belief that said appeal is pending. They came to know about the dismissal of said appeal only when they were served with the notices in execution proceedings. The petitioners have taken out an application for condonation of delay and the condonation of the delay in seeking restoration and for restoration of appeal. He submits that since sufficient cause was shown, the learned appeal Court failed to exercise jurisdiction by refusing to condone the delay.

4. Upon due consideration of the record as well as the contentions raised by Mr. Kursija, it is necessary to note that the appeal before the district court and was instituted by the petitioners. The petitioners were represented by an advocate. The appeal was not prosecuted diligently and ultimately came to be dismissed for non-prosecution. The petitioners, simply want to blame their advocate in the matter. The petitioners have not at all

explained as to why they did not pursue the matter with his advocate. The learned appeal court has quite correctly noted that in the application seeking condonation of delay, there is no explanation offered, though the delay is of over 15 months and 11 days. The petitioners' explanation, now offered, that they were under the bonafide belief that the appeal is pending, cannot be accepted. It is also duty of the petitioner to take steps and be vigilant as regards progress of the appeal.

5. The execution proceedings were lodged after sufficient time from the date of disposal of the appeal. The explanation, that petitioners come to know about dismissal of appeal only when they received notice in execution proceedings, cannot be accepted.

6. Since, there is neither any jurisdictional error nor any unreasonableness involved in the making of the impugned order, and no case is made out to interfere with the same. Accordingly this petition is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

Sd/-
(M. S. SONAK, J.)