

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****CIVIL APPLICATION NO. 3430 OF 2017****IN****FIRST APPEAL NO. 703 OF 1996****Smt.Prabhavati w/o Lalji alias
Ramshiroman Maurya****..... Applicant****IN THE MATTER BETWEEN****Smt.Prabhavati w/o Lalji alias
Ramshiroman Maurya & Anr.****..... Appellants****VERSUS****Smt.Isaraji w/o. Ishwardin Maurya & Anr. Respondents**

Ms.Swati P. Gautam for the Applicant/Appellants.

Mr.Dilip Rai, i/b. Ms.Aruna Singh for the Respondents.

CORAM : R.D. DHANUKA, J.**DATE : 20th NOVEMBER, 2019****P.C.**

By this civil application, the applicant prays for setting aside the order of dismissal of the Civil Application No.2727 of 2017 and seeking restoration of the said civil application.

2. Civil application is vehemently opposed by the learned counsel for the respondents to the amended civil application on the ground that neither delay is explained nor case is made out for setting aside the order of dismissal of Civil Application No.2727 of 2017.

3. Learned counsel placed reliance on the judgment of Supreme

Court in case of ***Katari Suryanarayana & Ors. vs. Koppiseti Subba Rao & Ors., AIR 2009 SC 2907*** and in particular paragraphs 10 to 14.

4. Learned counsel for the respondents states that various reasons recorded by the applicant in various civil applications about the date of knowledge of the death of the deceased respondent are totally inconsistent and on this ground also this court shall not grant any relief in the application filed by the applicant.

5. Learned counsel for the applicant on the other hand invited my attention to various averments made in the civil application and would submit that the applicant was required to change her advocate. The applicant is an uneducated lady and was not aware of the proceedings.

6. The applicant has recorded several other reasons in the civil application for condonation of delay and for recalling order passed by this court dismissing civil application.

7. A perusal of the order dated 2nd August, 2017 passed by this court in Civil Application (St) No. 20569 of 2017 indicates that the respondent had also filed two civil applications bearing nos. 4734 of 2005 and Stamp No. 3469 of 2013 for bringing the legal heirs of the original respondent on record on 4th June, 2004. Both the civil applications filed by the respondents to this civil application also came to be dismissed for non removal of the office objections.

8. This court passed an order on 31st August, 2017 in Civil Application No. 2607 of 2017 which was filed by the applicant (one of the respondent herein) for dismissal of the appeal as abated. This court

has disposed of the civil application as well as Civil Application (St) No.20674 of 2017 on the ground that since the appeal itself had abated. This court permitted the applicant to withdraw the said civil application.

9. After considering the reasons recorded in the civil application, I am of the view that the applicant has given sufficient reasons for condonation of delay in filing civil application and for recall of the order of dismissal passed in Civil Application No.2727 of 2017.

10. Insofar as judgment of Supreme Court in case of ***Katari Suryanarayana & Ors.*** (supra) relied upon by the learned counsel for the respondents is concerned, Supreme Court has considered a situation where no sufficient cause was shown for bringing the legal heirs of the deceased husband on record in the second appeal. In this case, the applicant has explained the delay in the civil application. The judgment of Supreme Court in case of ***Katari Suryanarayana & Ors.*** (supra) is thus distinguishable in the facts of this case and would not assist the case of the respondents. Civil application is made absolute in terms of prayer clauses (a) and (b). Civil Application No.2727 of 2017 is restored to file.

11. Place Civil Application No.2727 of 2017 with Civil Application No.3429 of 2017 on board.

12. The respondents would be at liberty to file affidavit to the Civil Application No.2727 of 2017 within two weeks from today and shall serve a copy thereof upon the applicants' advocate simultaneously.

13. Insofar as Civil Application No.3429 of 2017 is concerned, the respondent is at liberty to file reply within four weeks from today. Rejoinder, if any, in the said civil application shall be filed within two weeks from today with a copy thereof to be served upon the applicants' advocate simultaneously.

14. The applicants would be at liberty to file rejoinder to the affidavit in reply filed in Civil Application No.2727 of 2017 within two weeks from the date of the service of the affidavit in reply. No order as to costs.

15. Place both the civil applications on board on **14th January,2020.**

[R.D.DHANUKA, J.]