

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

933 WRIT PETITION NO.2143 OF 2017

BHAGABAI BHIVSAN DABHADE
VERSUS
GIRJUBA LAHANU GODSE AND OTHERS

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Advocate for Petitioner : Mr. Deshpande Siddharth R.
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CORAM : V. K. JADHAV, J.
DATE : 11.03.2020

PER COURT :-

1. By order dated 22.02.2017, this Court has issued the notice to respondent Nos.1, 2 and 4 for final disposal of the petition at the stage of admission. It further appears that though the respondents are duly served, none appears for them. The petitioner is the appellant (original defendant No.1) before the District Court in Regular Civil Appeal No.118 of 2014. During pendency of the said appeal, the respondent No.3-original plaintiff died and as such the petitioner has filed three applications (i) application for condonation of delay vide Exh.13, (ii) application for setting aside the abatement order vide Exh.14 and (iii) application to bring L.Rs. of respondent No.3 on record vide Exh.15. The learned District Judge No.13,

Aurangabad by common order dated 16.06.2016 below Exh.13, 14 and 15 rejected the applications. Hence, this Writ Petition.

2. The learned counsel for the petitioner submits that respondent No.3 died on 25.01.2015 and the petitioner got the knowledge on 04.03.2015 when the respondents in the appeal filed the pursis to that effect. The learned counsel submits that thereafter the petitioner has inquired about the legal heirs of respondent No.3 from Gram Panchayat, Babhulgaon and she got the names of the legal heirs and accordingly she had filed an application on 03.02.2016 along with the delay condonation application seeking condonation of delay of 284 days.

3. The learned counsel submits that in a case ***Perumon Bhagvathy Devaswom Vs. Bhargavi Amma*** reported in ***2009(2) Mh.L.J. 1***, the Supreme Court in paragraph No.8 of the order summarized the principles in considering the applications for setting aside the abatement. The learned counsel submits that the suit pertains to the immovable property about the declaration of ownership and a decree of perpetual injunction.

The Trial Court by judgment and decree dated 26.04.2013 decreed the suit and the Regular Civil Appeal No.118 of 2014 preferred by the petitioner herein was pending before the District Court since 2014. The learned counsel submits that the learned District Judge ought to have taken the pragmatic, liberal approach in deciding the applications. In case of *Perumon Bhagvathy Devaswom (supra)* relied upon by the learned counsel for the petitioner, in paragraph No.8 of the order, the Supreme Court has summarized the principles applicable in considering the applications for setting aside the abatement. Principles (i) to (v) are reproduced herein below :

“(i) The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bonafides, deliberate inaction or negligence on the part of the appellant.

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.

(v) Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal."

4. In the instant case, though I find the delay of 284 days in filing the application, however, I find no in-action or want of diligence on the part of the petitioner. The learned District Judge has observed that the petitioner has not stated in the application as to when she had made application to Gram Panchayat for obtaining the information about the legal heirs of respondent No.3, nor she has stated in the application as to when she got the said information from Gram Panchayat and

accordingly rejected all the applications. It is always a difficult task to collect the death certificate of the deceased-respondent and to collect the information about the legal heirs. So far as the words “sufficient cause for not making the application within a period of limitation” the same should be understood and applied in a reasonable, pragmatic, practical and liberal manner as observed by the Supreme Court in paragraph No.8 of the order, in the case cited above. Thus, considering the entire aspect of the case, I am inclined to allow this Writ Petition. The matter pertains to the immovable property and in view of the same and also in view of the discussion above, I am inclined to allow the Writ Petition. Hence, the following order :

ORDER

- (i) The Writ Petition is hereby allowed.
- (ii) The impugned common order passed below Exh.13, 14 and 15 by the District Judge-13, Aurangabad in Regular Civil Appeal No.118 of 2014, dated 16.06.2016 is hereby quashed and set aside.

(iii) Applications Exh.13, 14 and 15 are hereby allowed in its entirety in terms of the prayers in the respective applications.

(iv) Writ Petition accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-