

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 10111 OF 2019**

1. Niranjan Rajani .Petitioners  
Age 65, Occu – Retired  
Jaya Bungalow, Narli Baug  
Fort Road, Near Vasai Police  
Station, Vasai Road (West),  
Tal – Vasai, Dist – Palghar  
Pin – 401 201.

2. Manish Rajani  
Age 37, Occu – Legal Practitioner  
Jaya Bungalow, Narli Baug  
Fort Road, Near Vasai Police  
Station, Vasai Road (West),  
Tal – Vasai, Dist – Palghar  
Pin – 401 201.

Vs.

1. Hiren Rajani .Respondents  
Age 66, Occ – Legal Practitioner  
Shilpa Bungalow,  
Fort Road, Narli Baug, Vasai  
Fort Himself and in capacity of  
the executor for

(A) Krupali Rajani  
(B) Upasana Rajani  
(C) Krushali Rajani

All residing at  
Shilpa Bungalow,  
Fort Road, Narli Baug, Vasai  
Dist – Palghar  
Pin – 401 201.

2. Smt. Pallavi Kotasthane  
Age 67 yrs, occu – Medical Practitioner  
“Niharika Apartment, Kanakia Spaces,  
G. B. Road, Next to Hiranandani Meadows,

Thane (West) – 400 610.

3. Smt. Kashmira Thakker  
Age 49, Occu – Housewife,  
Mansarovar Apartment,  
Blood Bank Road,  
Bhavnagar,  
Gujarat – 364 001.
4. Mayura Mandar Keskar  
Age 30, Occu – Legal Practitioner  
C/o. Dr. Pallavi Kotasthane  
“Niharika” Apartment,  
Kanakia Spaces, G. B. Road,  
Thane (West) – 400 610.
5. Sachin Markand Kotasthane  
Age 34, Occu – Legal Practitioner  
C/o. Dr. Pallavi Kotasthane  
“Niharika” Apartment,  
Kanakia Spaces, G. B. Road,  
Thane (West) – 400 610.
6. Ekta Mehul Thakker  
Age : 22, Occu – Student  
“Mansarovar” Apartment,  
Blood Bank Road,  
Bhavnagar,  
Gujarat – 364 001.

Mr. Sharan Jagtiani a/w Mr. Vishal Maheshwari, Ms Kamini Pansare &  
Mr. Akshay Doctor i/b. V. M. Legal, Advocate, for the Petitioners  
Mr. Nitin Gangal a/w Mr. Ashok Kadam, Advocate, for the Respondent  
No. 1

**CORAM : REVATI MOHITE DERE, J.**

**DATE : 31.01.2020**

**P. C.**

. Heard learned counsel for the parties.

2. By this Petition, the Petitioners have impugned the order

dated 05.07.2019 passed by the learned C. J. S. D., Vasai, Palghar below Exh. 65, by which the learned Judge was pleased to reject the Petitioners' Application seeking condonation of delay of 8 years, 10 months and 13 days caused in filing the Written Statement in Special Civil Suit No. 15 of 2013, as well as the order dated 09.09.2019 passed below Exh. 77, rejecting the Petitioner's Application seeking review of the order dated 05.07.2019.

3. Learned counsel for the Petitioners submitted that the learned Judge ought to have condoned the delay of 8 years, 10 months and 13 days in filing the Written Statement, in the peculiar facts and circumstances of the case. He submits that the Petitioners had shown sufficient cause for condoning the said delay. According to the learned counsel for the Petitioners, the Petitioners were unable to file their Written Statement in the said suit due to non-availability of necessary documents i. e. Will and other documents. It was also urged that the Petitioners had filed an Application under Section 9A of the Code of Civil Procedure ( for short "C. P. C." ), as a result of which, the Written Statement was not filed. According to the learned counsel, since the Applications dated 22.04.2010 and 17.04.2015 preferred by the Petitioners were pending in the trial Court, the Petitioners could not have filed their Written Statement, without the said Applications being decided. He submits that soon after the challenge to the 9A Application

was given up by the Petitioners, which is recorded in the order dated 06.03.2019 passed in C. R. A. No. 264 of 2018, the Petitioners immediately filed an Application ( Exh. 15 ) seeking condonation of delay in filing the Written Statement and for permission to file the same on record. According to the learned counsel for the Petitioners, despite requesting the Respondent ( Original Plaintiff ) to furnish necessary documents, for which the Petitioners even filed Applications, the said documents were not made available to the Petitioners. He submitted that a liberal approach ought to have been adopted by the trial Court considering the relations between the parties.

4. Learned counsel for the Petitioners relied on two Judgments of this Court i. e. ***(i) Adamji Gulamhussein Tavawalla Vs. Maria Emillia Vaz and others***, reported in ***2019 (1) Mh. L. J.*** and ***Methodist Episcopal Church, Nagpur and others Vs. Methodist Church in India, Mumbai and others***, reported in ***2009 (4) Mh. L. J.*** as well as two Judgments of the Apex Court, i. e. ***Sambhaji And Others Vs. Gangabai And Others***, reported in ***(2008) 17 Supreme Court Cases 117*** and ***Desh Raj Vs. Balkishan (D) Through Proposed Lr. Ms. Rohini***, reported in ***2020 SCC Online SC 49***.

5. Learned counsel for the Petitioners submitted that in ***Methodist Episcopal Church, Nagpur and others (Supra)***, it is

observed that when there are pending Applications, that could constitute sufficient ground to condone the delay in filing the Written Statement; that in ***Adamji Gulamhussein Tavawalla Vs. Maria Emillia Vaz and other (Supra)***, this Court condoned a delay of 12 years on the premise that the substantive cause of justice requires that the matter should be decided on merits; and that in ***Sambhaji And Others Vs. Gangabai And Other (Supra)***, the Apex Court, condoned the delay considering that the dispute was between relatives.

6. Learned counsel for the contesting Respondent Nos. 1(A) to 1(C) opposed the Petition. He submits that no interference is warranted in the impugned orders. He submitted that the Petitioners had failed to show sufficient cause for condoning an extraordinary delay of 8 years, 10 months and 13 days. Learned counsel has also filed an Affidavit-in-reply of the said Respondents. According to the learned counsel for the Respondents, the allegation of the Petitioners that they were not provided with the copies of documents relied upon by the Respondents, is completely false and baseless. He submits that the Respondents had filed Misc. Appln. No. 18 of 2010 for grant of probate of the last Will dated 15.08.2002 of their late father, in the Court of the learned C. J. S. D., Vasai, Palghar sometime in March, 2010. He submits that summons issued in the said Misc. Appln. on 25.03.2010 were duly served upon the Petitioners on 30.03.2010. He submits that all the

documents referred to and relied upon in the said Application as well as the documents listed at Exh. 3 on the file of the learned trial Court, were also sent to the Petitioners by “Vichare Couriers” on 11.04.2010, which was duly received on the Petitioners on 15.04.2010. Learned counsel for the Respondents relied on the courier receipt, showing service. He further submits that the Petitioners had also called upon them and sought inspection and discovery of the proceedings vide letter dated 13.04.2010. He submits that the Petitioners’ replied to the said letter dated 18.05.2010 and fixed a date for the inspection, however, despite communicating the date and venue to the Petitioners i. e. 25.05.2010, neither the Petitioners nor their Advocate remained present for inspection and discovery. According to the learned counsel for the Respondents, the Petitioners are misleading the Court, that they have not received all the documents as well as a copy of the last Will of the deceased – Mr. Jaswant Rajani. He submits that the falsity of the Petitioners’ claim, is also evident from the fact, that the Petitioners filed an Application before the trial Court and sought a direction from the trial Court, that the Respondents be directed to supply copies of documents to the Petitioners, however, subsequently did not press the said Application. He submits that the Petitioners had also filed another Application dated 21.08.2010 for obtaining certified copies of the entire proceedings of Misc. Appln. No. 18 of 2010 ( filed by the Respondents), and that the entire proceedings of Misc. Appln., duly certified were

received by the Petitioners on 24.09.2010. Learned counsel relied on page No. 76 of the Affidavit-in-reply to show that the Application preferred by the Petitioners seeking entire brief of Misc. Appln. No. 18 of 2010 including roznama and all exhibits and the endorsement made by the Superintendent stating, that all the documents had been supplied on 24.09.2010. He submits that in this view of the matter, the Petitioners are misleading the Court and making incorrect and false statements that they had not received a copy of the Will and other documents filed in the proceedings. He further submitted that pendency of the Applications which are at page Nos. 58 & 59 of the Petition i. e. Exhs. 15 and 46, cannot even remotely be a ground for not filing the Written Statement within time. He further submitted that even filing of a 9A Application cannot be a ground for filing the Written Statement late, i. e. beyond 90 days. He submits that the said ground i. e. pendency of 9A Application which is sought to be urged here for the first time, has not even been raised in the Application seeking condonation of delay. He submits that the Application seeking condonation of delay filed by the Petitioners does not disclose sufficient cause for condoning an extraordinary delay of 8 years, 10 months and 13 days. He further submits that the other Defendants had appeared in the said proceedings and filed their Written Statement, although there was some delay in filing the same. He submits that no indulgence ought to be shown to the Petitioners by condoning the said delay, having regard to his conduct and as he has not

approached this Court with clean hands.

7. Learned counsel for the Respondents relied upon the Judgment of this Court in the case of ***Parasmal Daulatram Jain Vs. Rameshwar Rathanlal Karwa***, reported in ***2020 (1) Bom. C. R. 435***.

8. Perused the papers including the impugned orders. The Respondent No. 1 is the brother of the Petitioner No. 1 and the Respondent Nos. 1(a) to 1(c) are the daughters of Respondent No. 1, whereas, the Respondent Nos. 2 & 3 are the sisters of Petitioner No. 1 and Respondent No. 1 and Respondent Nos. 4 & 5 are son and daughter respectively of the Respondent No. 2 and the Respondent No. 6 is the daughter of the Respondent No. 3. Infact, the Respondent Nos. 2 to 6 are formal Defendants in the plaint, inasmuch as, no relief is sought by the Respondent No. 1 ( Original Plaintiff ) against them, in the suit. The Respondent No. 1 ( Original Plaintiff ) has filed a Misc. Appln. No. 18 of 2010 before the learned C. J. S. D., Vasai, Palghar for probate of the Will dated 15.08.2002 of late Mr. Jaswant Rajani ( father of the Petitioner No. 1 and the Respondent Nos. 1 to 3 ), which was later on converted into Special Civil Suit No. 15 of 2013.

9. It also appears that the Petitioners herein had filed Misc. Appln. No. 5 of 2005 in the same Court i. e. in the Court of the

learned C. J. S. D., Vasai, Palghar for grant of probate of Will dated 21.07.1997 of late Mr. Jaswant Rajani. As the said suit was contested by the Respondent Nos. 1(a) to 1(c), the trial Court vide order dated 23.12.2005 converted the probate proceedings into Special Civil Suit, being Special Civil Suit No. 1 of 2006. Thereafter, the Special Civil Suit was re-numbered as Special Civil Suit No. 436 of 2007. Both the said suits are pending before the same Court. In the suit filed by the Petitioners, the Respondent No. 1 has filed his Written Statement and has relied upon the Will dated 15.08.2002 of late Mr. Jaswant Rajani. It appears that during the pendency of the suit filed by the Respondent No. 1, the Petitioners filed Applications, in particular, Applications at Exh. 15 and Exh. 46 dated 22.04.2010 and 17.04.2015 respectively. The said Applications are at page Nos. 58 & 59 of the Petition. The Application at Exh. 15 dated 22.04.2010 is for a direction to the Respondents to supply copies of documents filed by them at Exh. 3 alongwith Misc. Appln. No. 18 of 2010 ( i. e. Special Civil Suit No. 15 of 2013 ). It appears that on 04.04.2019, the Petitioners did not press this Application. An endorsement to that effect has been made by the Petitioners on the said Application which is at page No. 58 of the Petition which reads thus :-

“This application be heard alongwith main application”.

The second Application ( Exh. 46 ) dated 17.04.2015 was also filed by

the Petitioners for a direction, that the Respondent No. 1 be directed to supply copies of all the documents filed by him at Exh. 3 including the alleged Will dated 15.08.2002 of Mr. Jaswant Rajani ( deceased ) relied by him and also for grant of time to file Written Statement. It appears that the said Application is still pending. Although, learned counsel for the Petitioners submits that no documents were supplied to him, in particular, the purported Will dated 15.08.2002 till date, the documents on record reflect to the contrary. A perusal of document at Exh. 50 on page No. 76 i. e. Exh. 1 filed by the Respondents in their Affidavit-in-reply shows that the Petitioners had applied for the entire brief including the roznama and all exhibits on 21.08.2010. There is an endorsement that the said Application was received on 21.08.2010 and charges of Rs. 200/- were paid. The endorsement on the back of this page shows that the said documents were supplied by the Superintendent on 24.09.2010. There is an endorsement that the documents have been received and additional payment was made on the said documents. It appears that the Petitioners in their cross examinations have also admitted having read the Will dated 15.08.2002 of late Mr. Jaswant Rajani ( deceased ). Even otherwise, it is unbelievable and difficult to digest that the suit which is pending since 2010 ( filed by the Respondent No. 1 ), the Petitioners have till date, not received the Will dated 15.08.2002. Infact, it is evident that in 2010, the Petitioners did not press the Application ( Exh. 15 ), by which he had sought supply of

copies of documents filed by the Respondent No. 1 ( Original Plaintiff ) and instead made an endorsement on the said Application, that the said Application be heard alongwith the main Application. The Petitioners also sought inspection and despite the Respondents fixing the date and venue of inspection, did not remain present for the same on 25.05.2010. Much can be said about the conduct of the Petitioners. As far as pendency of the Application under Section 9A of the C. P. C. is concerned, the said Application was filed by the Petitioners on the premise that the Court had no jurisdiction to entertain the suit. In the facts, mere pendency of the 9A Application cannot be a ground for not filing the Written Statement in time. Infact, a perusal of the Application seeking condonation of delay shows, that this ground has not even been raised / taken in the said Application.

10. The Apex Court in the case of ***R. N. Jadi & Brothers And Others Vs. Subhashchandra***, reported in ***(2007) 6 Supreme Court Cases 420*** had in para 6 observed that the amendment to C. P. C. was made, having regard to the anxiety of the Parliament, as evident from the amendments, to secure an early and expeditious disposal of civil suits and proceedings, without sacrificing the fairness of trial and the principles of natural justice inbuilt in any sustainable procedure.

11. Similarly, in ***Desh Raj (Supra)***, the Apex Court while

considering a case under the Commercial Courts Act noted that routine condonations and cavalier attitudes towards the process of law affects the administration of justice. It affects docket management of Courts and causes avoidable delays, cost escalations and chaos and that the effect of this is borne not only by the litigants, but also the commerce in the country and the public-in-general who spend decades mired in technical processes. In ***Atcom Technologies Limited Vs. Y. A. Chunawala And Company And Others***, reported in ( 2018 ) 6 ***Supreme Court Cases*** 639, the Apex Court in para 22 observed that the High Court ought not to have condoned the delay by disregarding the provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908 and the spirit behind it. The Apex Court further observed that the delay condoned by the High Court by balancing the rights and equities is far-fetched and, in the process, abnormal delay in filing the written statement is condoned without addressing the relevant factor viz. whether the respondents had furnished proper and satisfactory explanation for such a delay.

12. As far as the Judgments relied upon by the Petitioners are concerned, the same are clearly distinguishable. In the present case, the Petitioners' conduct in delaying the trial is evident, inasmuch, as for ten years the Petitioners has pleaded and is even now pleading that they have not received a copy of the alleged Will dated 15.08.2002. It

appears that the intention of the Petitioners is only to delay the case and the same is evident from what is stated in the earlier paras. Infact, a perusal of the Application ( Exh. 65 ) seeking condonation of delay of 8 years, 10 months and 13 days caused in filing the Written Statement also shows that the same is bereft of any details. Infact, no sufficient cause is disclosed for condoning an abnormal delay of 8 years, 10 months and 13 days. The Application mentions that the Petitioners were not provided with the copies of documents despite being asked is not only contrary to the endorsement made by the Petitioners on the Application ( Exh. 15 ) dated 22.04.2010, but is a false and misleading statement. Mere pendency of the 9A Application having regard to the present facts cannot be a sole ground for condoning the delay in filing the Written Statement. Infact, as noted above, the said ground is not even raised in the Application seeking condonation of delay.

13. Considering the aforesaid, no infirmity can be found in the impugned order dated 05.07.2019 passed by the learned C. J. S. D., Vasai, Palghar below Exh. 65, by which the Petitioners' Application seeking condonation of delay of 8 years, 10 months and 13 days came to be rejected nor is there any infirmity in the impugned order dated 09.09.2019 below Exh. 77, by which the Petitioners' Application seeking review of the order dated 05.07.2019 under O. XIVVII, Rule 1 r/w 114 of the C. P. C. was rejected.

14. Considering the aforesaid, there is no merit in the Petition.  
The same is accordingly dismissed.

**(REVATI MOHITE DERE, J.)**