

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

8 CIVIL APPLICATION NO.3757 OF 2012
IN SAST/142/2012

BALWANT LAXMAN DESHMUKH
VERSUS
BABAN MARUTI SONWANE AND ORS

...
Advocate for Applicant : Mr. Sabnis h/f Mr. Thigale Girish K. (Naik)
Advocate for Respondent Nos.1 and 2 : Mr. Shinde A. D.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 17.08.2021

ORDER :-

. Present application has been filed for getting the delay of 363 days condoned in filing second appeal.

2. At the outset, it is to be noted that the notices issued to respondent Nos.5 and 9 were returned unserved with remark that they are dead. Thereafter, by order dated 28.03.2016, this Court directed the appellant to take steps in respect of deceased respondent Nos.5 and 9 prior to 18.04.2016. It was also stated that if steps are not taken, then the application would stand dismissed automatically. No steps were taken by the appellant and, therefore, the operation of the order came into effect and it has been treated that the application is dismissed as against those respondents. Though learned Advocate Mr. Sabnis holding for learned Advocate Mr. Thigale now submits that the application is

ready, yet, I could not see any reasonable ground as to why it has not been produced/filed for about four to five years. The suit was filed for partition, possession, declaration and recovery of mesne profits by the appellant – original plaintiff, to which present respondent No.9 was also party as a plaintiff. It was against respondent Nos.1 to 8. Respondent No.5 was original respondent No.5. The suit was partly decreed and it appears that original respondent Nos.1 and 2 as well as defendant No.3 had filed separate appeals. Both the appeals came to be dismissed. So also, the cross objections filed by original plaintiffs were dismissed. Under such circumstance, what was asked by the original plaintiffs was a joint and several decree against defendant Nos.1 to 8. Though original defendant Nos.7 and 8 are the State Authorities and the suit was dismissed against them, the question was involved in respect of withdrawal of the amount of compensation. Under such circumstance, we cannot proceed further in absence of the legal representatives of respondent Nos.5 and 9. In view of the decision of the Hon'ble Supreme Court in *Bibijan and others Vs. Murlidhar and others*, [(1995) 1 SCC 187], the entire appeal cannot be proceeded and, therefore, no question arises for condoning the delay. The application in its entirety stands dismissed.

[SMT. VIBHA KANKANWADI, J.]

scm