

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO.4238 OF 2021
IN SA/168/2003
WITH
CIVIL APPLICATION NO.4239 OF 2021
IN SA/168/2003**

SAMBHAJI BAPUJI METKAR (DECEASED)
THROUGH L.Rs. AND OTHERS
VERSUS
SATWAJI W/O MAHADJI METKAR (DECEASED)
THROUGH L.Rs. AND OTHERS

.....
Advocate for Applicants : Mr. G. M. Jadhav
Advocate for Respondents No.1 to 4 : Mr. M. M. Joshi and
Mr. Ajay Kulkarni.
.....

**CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 12-08-2021.**

ORDER :

1. The present application has been filed for condoning of delay of 2270 days for making application for setting aside abatement and bringing the legal representatives of the sole appellant on record. The second prayer in the application is to condone the delay of 4173 days in filing an application for restoration of the second appeal which was dismissed on 11-09-2008.
2. Heard learned Advocate Mr. G. M. Jadhav for applicants and

learned Advocate Mr. M. M. Josh and Ajay Kulkarni for respondents No.1 to 4.

3. It has been vehemently submitted on behalf of the applicants that the sole appellant suffered a paralytic attack on 23-01-2008 and he expired on 30-07-2013. He has left behind him three sons and one married daughter. The legal representatives were not aware of the pendency of the second appeal. They are Adivasi and they have been dispossessed from the suit land by the respondents. Their vital rights are involved and, therefore, it is necessary to restore the second appeal. The delay has been caused in bringing the legal representatives as after the death of the sole appellant his two sons suffered a heart attack. Out of them, son by name Arjun expired, thereafter, they were occupied with the marriages of the daughters and, therefore, they could not take steps in the second appeal.

4. The learned Advocate for respondents strongly objected the application by saying that it is huge delay and has not been properly explained much less sufficiently.

5. At the outset, it is to be noted that the original appellant filed

Second Appeal No.168 of 2003 along with the application for an injunction. However, on 30-06-2003 itself when the matter was on board, it was noticed that in the said injunction application the applicant/appellant had prayed for the restoration of possession contending that before the appeal could be heard for admission the decree has been executed and he has lost the possession. This Court observed that the said application for stay of the execution has become infructuous and, therefore, it was disposed of. It also appears from the record that till 2008 the appellant had not even taken steps to get the matter admitted though circulations were granted in between. On 11-09-2008 this Court passed the order as under : -

"No one present for the appellant. Shri M. M. Joshi, Advocate for the respondents. Matter dismissed for non-prosecution."

Here, the applicants are coming with a case that deceased Sambhaji Bapuji Metkar i.e. appellant suffered a paralytic attack on 23-01-2008, however, it appears that from 2003 to 2008, that is before he suffered the paralytic attack, he never tried to get the matter admitted. Thereafter also after suffering the paralytic attack it appears that he had not asked any of his sons to look after the

matter. The applicants are not given any reason for non-communication by the appellant to them and to what extent the body of the appellant was affected by paralysis. Applicants have now stated that the appellant was unable to speak since the paralytic attack but they have not attached any medical certificate in support of their said contention. The sold appellant died on 30-07-2013, which means for about five years he was alive. After his death also from 2013 till 28-01-2021 the applicants have not made any efforts. No doubt, it is stated that the appellant's Advocate had contacted them in December 2011 to take steps in the second appeal, but then why they waited for a further two years, is not explained by them at all. Though it is stated that two of the sons of the appellant suffered heart attack, documents have not been attached. No doubt, it appears that one of the sons of the appellant expired but then his date of death is 11-05-2019. It is also stated that the marriages of the daughters of the respective brothers were performed in between. Certain events are definitely going to take place in a man's life but that does not mean that he or she should be negligent towards the legal responsibilities. In fact, under the execution original appellant had lost the possession and it cannot be imagined that the sons would not have noticed losing of possession

on the suit land by their father. In spite of the said fact, they have kept mum for so many months and whatever reasons they have tried to give now cannot be said to be sufficient much less reasonable. Hence, the application deserves to be dismissed, accordingly, it is dismissed. Pending Civil Application 4239 of 2021 stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

GAWADE
VIRENDRA
J

Digitally signed
by GAWADE
VIRENDRA J
Date: 2021.08.18
10:02:14 +0530