

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

**911 CIVIL APPLICATION NO.7643 OF 2020  
IN SAST/7966/2017**

**WITH**

**CIVIL APPLICATION NO.7649 OF 2020  
IN SAST/7966/2017**

**DULICHAND MOTIRAM RAJPUT, DIED, THROUGH LRS RUKHMABAI  
DULICHAND RAJPUT AND OTHERS**

**VERSUS**

**MANGALBAI RATNAKAR SHIMPI**

...

Mr. M.M. Patil (Beedkar), Advocate for applicants

Mr. G.V. Wani, Advocate for the sole respondent

...

**CORAM : SMT. VIBHA KANKANWADI, J.**

**DATE : 23<sup>rd</sup> SEPTEMBER, 2021**

**ORDER :**

1 Civil application No.7643 of 2020 has been filed by the applicants/appellants to bring the legal representatives of appellant on record and Civil Application No.7649 of 2020 is filed for getting delay of 884 days condoned in filing Second Appeal.

2 Heard learned Advocate Mr. M.M. Patil (Beedkar) for applicants

and learned Advocate Mr. G.V. Wani for the sole respondent. In order to cut short it can be said that they have argued in support of their respective contentions.

3           The present applicants are the legal representatives of original defendant No.2. Present respondent-original plaintiff had filed Regular Civil Suit No.220/2000 before Civil Judge Junior Division, Jamner, Dist. Jalgaon for specific performance of the contract. It was filed against in all nine persons. The suit was decreed. It was declared that the plaintiff is entitled to get execution of the sale deed from the defendants in respect of suit land on payment of amount of Rs.43,100/-. The defendants were directed to execute the sale deed in favour of plaintiff. It appears that original defendant Nos.1 to 3 filed Civil Appeal No.228/2006 challenging said Judgment and Decree before the learned Principal District Judge, Jalgaon. The appeal was dismissed on 09.07.2014. Now, the original defendant No.2's legal representatives want to file the Second Appeal, however, there is delay of 884 days and then they have filed the application for bringing the legal representatives on record.

4           Interesting point to be noted is that before the First Appellate Court itself original defendant Nos.1 and 3 expired and the appeal had abated against them. There was no attempt to bring their legal

representatives on record. When the matter was before the First Appellate Court and, therefore, when the suit was for specific performance of the contract and all the defendants were directed to execute the sale deed in favour of plaintiff, the decree that was passed was in fact the joint and several decree. The First Appellate Court could not have proceeded further and a contrary Judgment could not have been given. The ratio laid down in **State of Punjab vs. Nathu Ram [AIR 1962 SC 89]** and **Bibijan and others vs. Murlidhar and others [1995 (1) SCC 187]** would be applicable here, wherein, the observation runs thus –

“The question whether a court can deal with such matters or not, will depend on the facts of each case and therefore no exhaustive statement can be made about the circumstances when this is possible or is not possible. It may, however, be stated that ordinarily the considerations which weigh with the Court in deciding upon this question are whether the appeal between the appellants and the respondents other than the deceased can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the Court. The test to determine this has been described in diverse forms. Courts will not proceed with an appeal (a) when the success of the appeal may lead to the court’s coming to a decision which will be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to the court’s passing a decree which will be contradictory to the decree which had become final with respect to the same subject-matter between the appellant and the deceased

respondent; (b) when the appellant could not have brought the action for the necessary reliefs against those respondents alone who are still before the court and (c) when the decree against the surviving respondents, if the appeal succeeds, will be ineffective, that is to say, it could not be successfully executed.”

5           Further, now, even the original defendant No.2 expired on 22.04.2015, that is, after the First Appellate Court had pronounced the Judgment. Though in the Civil application No.7643 of 2020 the applicants contend that they are already on record; yet, it is to be noted that it is in the context that their application for condonation of delay in filing the Second Appeal is pending, they are saying that they are on record.

6           Another aspect, that is, required to be noted is that whether the present applicants have shown reasonable and sufficient ground to condone the delay. They are contending that they were not aware about the litigation, as their predecessor had never disclosed about the litigation to them. They got the knowledge in the month of August, 2016 about the execution proceedings. It is then contended that the applicants have not received even the notice in respect of execution proceedings. Except bare statement there is nothing on record. It is very much easy to claim ignorance. When the present applicants are the grown up persons i.e. wife and sons and staying

together, it is hard to believe that they would not have had knowledge about the litigation. No reasonable ground, much less sufficient has been shown to condone the delay and, therefore, on both the counts, both the applications deserve to be rejected. Hence, they are rejected at the threshold.

**( Smt. Vibha Kankanwadi, J. )**

agd