

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6857 OF 2018

Indersing Gumansing Valvi,
(Died), through His L.Rs.

1-1] Vikramsing Vijaysing Valvi,
Age : 47 years, Occ. Agri.
and others

..Petitioners

Vs.

Nandadevi Karansingh Valvi,
(died), through her L.Rs.

1-A] Noorjahanbai w/o. Pratapsing Vasave
(died), through her L.Rs.

1-A-1] Ikbalsingh Pratapsing Vasave,
Age : 47 years, Occ. Agri.
and ors.

..Respondents

Mr.D.A.Mane, Advocate h/f. Mr.D.N.Pingle, Advocate for
petitioners

Mr.Chaitanya C. Deshpande, Advocate for respondent nos.1-A-1
to 1-A-3, 1A-5 to 1A-11,
1-A-4, 1-A-6, to 6-C deleted

CORAM : R.G. AVACHAT, J.
DATE : MARCH 09, 2021

ORDER :-

The challenge in this Writ Petition is to the order
passed by learned Ad-hoc District Judge-1, Shahada, on

09.02.2018 on application below Exhibits.31, 33 and 35 in Regular Civil Appeal No.46 of 2012. By the impugned order, the applications moved by the petitioner for condonation of delay, setting aside abatement and to bring on record legal representatives of the deceased respondent no.1A, came to be rejected. Hence, the Writ Petition.

2. The petitioners claimed to be entitled to receive compensation of the land acquired by the Sub Divisional Officer, Nandurbar. The respondents set up rival claim. The petitioners, therefore, filed the suit, being Special Civil Suit No.7 of 1998 for declaration that the petitioners are the only persons entitled to receive compensation amount of Rs.3,36,457/-. Relief of injunction was also sought for restraining the respondents/defendants from receiving the amount of compensation. The trial Court dismissed the suit. The petitioners preferred First Appeal to the High Court. On enhancement of the appellate jurisdiction of the District Court, the appeal came to be transferred to the District Court at Shahada. Then it was noticed that respondent no.1A –

Noorjahanbai had died pending the appeal before the High Court. The petitioners, for want of knowledge, could not take steps to bring on record legal representatives of deceased respondent no.1A. The petitioners, therefore, preferred applications below Exhibits-31, 33 and 35 for condonation of delay, setting aside abatement and to bring on record the legal representatives.

3. The appellate Court, vide order dated 09.02.2018, rejected aforesaid applications on the ground that the petitioners did not offer proper explanation for the delay. On the contrary, the petitioners were found to be in the know of the death of respondent no.1A. The petitioners had an opportunity to move such applications at least in the year 2013. For over four years, they did nothing.

4. Mr.Mane, learned counsel for the petitioners, would submit that the petitioners were illiterate and rustic. Right to property was involved in the suit. The appeal was pending in the High Court. No dates were assigned for the appeal. The

petitioners had no knowledge about death of respondent no.1A. He, therefore, urged for allowing the Writ Petition.

5. Learned counsel for the respondents would, on the other hand, submit that the deceased – respondent was one of the relatives of the petitioners. They had every knowledge about her death. Her legal representatives had already been brought on record in the appeal preferred against the decree passed in the suit for injunction. The petitioners, thus, came with a false case of having no knowledge about death of respondent no.1A. Learned counsel would support the impugned order.

6. The petitioners were plaintiffs in Special Suit No.7 of 1998. They claimed to be only persons entitled to receive compensation of the land acquired by the Sub-Divisional Officer, Nandurbar. They had been unsuccessful in the suit. The petitioners, therefore, preferred appeal against the judgment and decree passed in the said suit. It was the First Appeal filed in the High Court. On enhancement of the

pecuniary appellate jurisdiction of the District Court, the appeal came to be remitted to the District Judge, at Shahada. It is found that respondent no.1A died on 28.05.2004 while appeal was pending in the High Court. In the case of **Peruman Bhagvathy Devaswom Perinadu Vs. Bhargavi Amma**, LAWS (SC) 2008 7 172, it is observed thus:-

6. What should be the approach of courts while considering applications under [section 5](#) of Limitation Act, 1963, has been indicated in several decisions. It may be sufficient to refer to two of them. In [Shakuntala Devi Jain v. Kuntal Kumari](#) [AIR 1969 SC 575], this Court reiterated the following classic statement from Krishna vs. Chathappan [1890 ILR 13 Mad 269] :

"... [Section 5](#) gives the courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant."

In [N.Balakrishnan v. M.Krishnamurthy](#) [1998 (7) SCC 123], this Court held:

"It is axiomatic that condonation of delay is a matter of discretion of the court. [Section 5](#) of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice.....

Rules of limitation are not meant to destroy

the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly.

A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under [Section 5](#) of the Limitation Act should receive a liberal construction so as to advance substantial justice.

It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation."

[Emphasis supplied]

7. This Court has also considered the scope of Rules 4 and 9 of Order 22 in several decisions. We will refer to them. In *Union of India Vs. Ram Charan (deceased) by LRs.* [AIR 1964 SC 215], this Court observed thus :

"The provisions of the Code are with a view to advance the cause of justice. Of course, the Court, in considering whether the appellant has established

sufficient cause for his not continuing the suit in time or for not applying for the setting aside of the abatement within time, need not be over-strict in expecting such proof of the suggested cause as it would accept for holding certain fact established, both because the question does not relate to the merits of the dispute between the parties and because if the abatement is set aside, the merits of the dispute can be determined while, if the abatement is not set aside, the appellant is deprived of his proving his claim on account of his culpable negligence or lack of vigilance. It is true that it is no duty of the appellant to make regular enquiries from time to time about the health or existing of the respondent."

(Emphasis supplied)

This Court also made some observations in Ram Charan (Supra) about the need to explain, in addition to alleging that the plaintiff/appellant not being aware about the death, the reasons for not knowing about the death within a reasonable time. Those observations have stood diluted in view of subsequent insertion of sub-rule (5) in Rule 4 and addition of Rule 10A in Order 22 CPC by [Amendment Act 104 of 1976](#), requiring (i) the court to take note of the ignorance of death as sufficient cause for condonation of delay, (ii) the counsel for the deceased party to inform the court about the death of his client.

[In Ram Nath Sao vs. Gobardhan Sao \[2002 \(3\) SCC 195\]](#) this Court observed thus :

"12. Thus it becomes plain that the expression "sufficient cause" within the meaning of [Section 5](#) of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished

should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

[Emphasis supplied]

In *Sital Prasad Saxena (dead) by LRs. v. Union of India & Ors.* [1985 (1) SCC 163], this Court stated :

"...once an appeal is pending in the High Court, the heirs are not expected to keep a constant watch on the continued existence of parties to the appeal before the High Court which has a seat far away from where parties in rural areas may be residing. And in a traditional rural family the father may not have informed his son about the litigation in which he was involved and was a party. Let it be recalled what has been said umpteen times that rules of procedure are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties."

In *State of Madhya Pradesh vs. S. S. Akolkar* - 1996 (2) SCC 568, this Court held :

"Under Order 22 Rule 10A, it is the duty of the counsel, on coming to know of the

death of a party, to inform it to the Court and the Court shall give notice to the other party of the death. By necessary implication delay for substitution of legal representatives begins to run from the date of knowledge.

It is settled law that the consideration for condonation of delay Under Section 5 of Limitation Act and setting aside of the abatement under Order 22 are entirely distinct and different. The Court always liberally considers the latter, though in some cases, the Court may refuse to condone the delay Under Section 5 in filing the appeals.

7. The petitioners claimed to be illiterate and rustic persons. They have been agitating their claim since 1998. They have been unsuccessful before the trial. If the Writ Petition is not allowed, they would be unsuccessful in the appeal for technical reason other than merit of the case.

8. If the petition is allowed, no prejudice would be caused to the respondents. The appeal needs to be heard on merit. For these reasons, I am inclined to allow the Writ Petition.

9. Writ Petition is, thus, allowed in terms of prayer clauses (B) and (C). Learned District Judge is expected to decide the appeal on its own merits within a period of one year from the date of receipt of copy of this order.

10. The petitioners to pay the respondents costs of Rs.10,000/- (Rupees Thousand) before the appellate Court.

[R.G. AVACHAT, J.]

KBP