

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO.5821 OF 2021
IN SA/723/2016**

UDDHAV RAJARAM BADGUJAR
VERSUS
JIVAN VITTHAL BADGUJAR (DIED) THROUGH LEGAL HEIRS
AND OTHERS

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Advocate for Applicant : Mr. V. B. Patil
Advocate for Respondents No.1 to 12 : Mr. M. M. Bhokarikar
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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving the Order :
15-07-2021**

**Date of Pronouncing the Order :
20-07-2021**

ORDER :

1. The present application has been filed by the appellant for getting delay of 663 days condoned in bringing legal representatives of respondent No.1 on record and for allowing him to bring those representatives on record.
2. Heard learned Advocate Mr. V. B. Patil for applicant and learned Advocate Mr. M. M. Bhokarikar for respondents No.1 to 12.
3. It has been vehemently submitted on behalf of the

applicant/appellant that respondent No.1 Jivan Vitthal Badgujar expired on 21-02-2018 leaving behind present respondents No.1-A to 1-F. Learned Advocate for the respondent had filed pursis on 06-10-2018 and intimated the Court about the death of respondent No.1, however, on that day the matter was not on board. The second appeal came to be listed on 30-11-2018 and at that time the learned Advocate for respondent No.1 pointed out the fact about the death of respondent No.1. A statement was made on behalf of the applicant that the application to bring the legal representatives would be filed. Due to the old age and later on Christmas vacation, there was some lack of communication between the Advocate and the applicant and, therefore, immediate steps could not be taken up. Thereafter, since March 2020 there is a complete lockdown. The applicant is a very old person. He is residing at Chopda Dist. Jalgaon which is about 200 kilometres from Aurangabad and, therefore, he could not take the steps. There was no intentional delay. The said delay deserves to be condoned and the applicant be allowed to bring the legal representatives of respondent No.1 on record.

4. Learned Advocate Mr. M. M. Bhokarikar appearing for the

respondents strongly objected to the application and submitted that on 06-10-2018 a pursis was filed before the Registrar of this Court intimating the fact of the death of respondent No.1 Jivan and even the names of the legal heirs left by him were given along with the photocopy of the death certificate. On the same day, the copy of the pursis was received by the learned Advocate for the applicant, yet no steps were taken for years together, now on the count of old age and COVID-19 situation, the applicant/appellant cannot be given leniency. The litigation has a checkered history. After the decree has been passed in favour of the respondents in 2008, the present applicant/appellant had filed an application under Section 47 of the Code of Civil Procedure in Regular Darkhast No.52 of 2007 for raising objection and inclusion of the applicant as a third party. Those applications were filed at Exhibits 38 and 47 and the application at Exhibit 35 was filed by decree-holder for issuance of possession warrant. Learned executing Court rejected Exhibits 38 and 47 and allowed the application Exhibit 35 on 09-12-2015. It was challenged by way of Civil Appeal before District Court-1, Amalner. Civil Appeal No.70 of 2015 came to be dismissed on 30-09-2016. The present applicant intends to protract the litigation on some flimsy grounds and rights which were never with the applicant/

appellant.

5. The factual aspect is required to be considered here first. Respondent No.1 Jivan expired on 21-02-2018 and it appears that the death certificate has been issued by the Municipal Council, Chopda on 30-06-2018. Thereafter, on 06-10-2018 the pursis was filed by the learned Advocate for the respondents with the office of this Court and a copy of the said pursis was given to the learned Advocate for the appellant. The said acknowledgement about receiving the copy is on record. Now it was for the applicant to explain properly with sufficient reasons as to why he could not take steps from 06-10-2018 till at least 22-03-2020 that is before the lockdown was declared. Only on the ground that the applicant/appellant is a super senior citizen, we cannot give a concession to him. An important point to be noted is that though his age is 81, as stated in the civil application, yet it is stated that his occupation is business. The applicant has not stated that he had any kind of physical barriers. Merely mentioning that he is an old age person, suffering from multiple diseases, will not be sufficient. He has not produced any documentary evidence to support this statement. If he can conduct the business at the age of 81, then

definitely he cannot claim a concession. It is to be noted that the applicant intends to raise objection on the ground that the tenancy has devolved on him and he is conducting business from the suit premises. Thus, when he intends to canvas that he will have to accept that his health is good and he is discharging his daily routine without any intervention. We cannot find any cogent, reasonable, much less sufficient ground explaining the delay between 06-10-2018 to 22-03-2020. After 22-03-2020 definitely it was a COVID-19 situation but then in the meantime after January 2021 the restrictions were lifted. Even in the case of businesses they are lifted and shops are allowed to be run for a particular period. Therefore, the ground of the COVID-19 situation will not be available to all the litigants all the time. It would depend upon the period involved and if the period involved is prior to the lockdown then it should be explained properly, sufficiently and reasonably. For almost one and half year, there was absolutely no effort on the part of the applicant to bring the legal representatives of respondent No.1 on record though he had the knowledge about the same. The pursis was filed under the provisions of Order 22 Rule 10-A of the Code of Civil Procedure and, therefore, it was incumbent upon the applicant to at least explain the delay from the day the intimation

was given. Since the delay is inordinate, unexplained properly, the leniency cannot be shown only in favour of the applicant. Further, the decree has been passed in favour of the respondents way back in the year 2008 and they have not yet received the fruits of the same. With these backgrounds any attempt to protract the matter or negligence on the part of such litigant cannot be condoned. Hence, the application stands rejected. Place the matter for further hearing on 29-07-2021.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-