

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

WRIT PETITION NO.14239 OF 2019

Smt. Lalitabai w/o Namdeorao Chavan,
Age : 69 years, Occu: Household,
R/o Ganesh Nagar, Old Ausa Road,
behind L.I.C. Office, Latur,
Tq. & Dist. Latur.

... **PETITIONER**
(Orig. Respondent)

VERSUS

Sow Sushma w/o Suresh Wadgane,
Age : 51 years, Occu: Household,
R/o. Suvarn Park Society,
Jagtap Patil Builders,
Pimple Gurav, Pimpri, Pune.

... **RESPONDENT**
(Orig. Applicant)

...

Advocate for Petitioner : Mr. Manale Satish S
Advocate for Respondent : Mr. Pradhan Laxman K. and M.B. Ubale

...

CORAM : MANGESH S. PATIL, J.

DATE : 27.09.2021

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forth. At the request of the parties, the matter is heard finally at the stage of admission.

2. By the impugned order, the learned Civil Judge has condoned the delay of 03 years 03 months and 22 days in preferring an Application for revoking heirship certificate issued in favour of the petitioner under the Bombay Regulation Act, 1827 as heir of her deceased husband.

3. The learned advocate for the petitioner would submit that she

had obtained the heirship certificate by submitting the application bearing MCA No.160/2012. One Ramrao with whom she had a dispute over a flat which was standing in the name of her deceased husband, submitted a similar application as has been filed by the respondent seeking revocation of the heirship certificate granted in her name. The respondent was examined as a witness by Ramrao and during her cross-examination she specifically admitted about knowledge of petitioner obtaining the heirship certificate about five months prior to her deposition recorded on 17.08.2017. It is thereafter, after about 14 months she submitted the present application seeking revocation of the heirship certificate. He would further submit that even during her testimony recorded in the Application for Condonation of Delay she admitted that she has filed the present Application at the behest of Ramrao Pawar whose application for revocation of the same self certificate was rejected. Apart from the fact that there is no sufficient cause put forth and established for condoning the delay, the Application itself was filed *mala fide* at the behest of unsuccessful Ramrao. For this reason alone, the Application for condonation of delay was liable to be rejected. The learned Civil Judge in spite of being alive to all the aforementioned facts and circumstances has allowed the Application by the impugned order by simply observing in one line that the Application disclosed sufficient cause. The impugned order is grossly erroneous and illegal. He would cite following decisions in support of his submission :

- i. **N. Balakrishnan Vs. M. Krishnamurthy; 1998 AIR (SC) 3222**

- ii. **Perumon Bhagvathy Devaswom, Perinadu Village Vs. Bhargavi Amma (dead) by LRs & Ors.; 2009 (2) Mh.L.J. 1**
- iii. **Manoharan Vs. Sivarajan & Ors.; 2014(5) Mh.L.J. 3**
- iv. **B. Madhuri Goud Vs. B. Damodar Reddy ; 2012(12) SCC 693**

4. The learned advocate for the respondent submits that in fact the applicant in spite of being the mother of the respondent was bold enough to obtain the heirship certificate by falsely mentioning that there was no other heir left behind by her husband. After realizing the fact that she had obtained the heirship certificate clandestinely, the respondent had no alternative but to seek its revocation. There was no reason why the respondent would cause her rights to be extinguished by lapse of time. The delay has been rightly condoned by imposing some cost and at the most those may be enhanced as a condition for condoning the delay.

5. I have carefully considered the rival submissions and perused the papers. Most of the facts are not in dispute. The Application for heirship certificate was filed by the petitioner by mentioning that there were no other heirs left behind by her husband albeit, apart from the respondent she has one more daughter by name Pratibha. There is also no dispute about the fact that Ramrao had filed Miscellaneous Application No.406/2016 seeking revocation of the heirship certificate granted in favour of the petitioner. There is no dispute that the respondent was examined by him as his witness No.2. During her cross-examination in that deposition she *inter alia* admitted to have got the knowledge about petitioner having

obtained the heirship certificate 4 to 5 months prior to her deposition recorded on 17.08.2017.

6. Assuming for the sake of arguments that she got the knowledge, as stated by her, about 5 to 6 months prior to her deposition, still even from such date of knowledge it took her about 17 to 18 months for filing the present Application. Going by her testimony recorded in the Application and the contents of the Application for condonation of delay, one cannot find any plausible reason which could have prevented her from applying for revocation of certificate in time.

7. Apart from the above state of affairs, it is necessary to note that a heirship certificate under Bombay Regulation is issued by publishing a citation and paper publication as per the order passed on that Application. Meaning thereby that the world at large can be attributed with the knowledge of institution of proceeding. If that be so, the plea of the respondent that he got the knowledge only 4 to 5 months prior to the stepping into the witness box in the year 2017 is not sustainable in law.

8. Again, in her testimony recorded in the present proceeding also she has been bold enough to confess that she has filed the present application after the Application of Ramrao was rejected, and at his instance. This clearly demonstrates that the delay is deliberate and *mala fide*. It is trite that the discretionary relief of condonation of delay is available only to a party which acts *bona fide*. The facts and circumstances unerringly demonstrate, apart from the fact that there is no sufficient cause

for condonation of delay, the respondent has been acting *mala fide*. The learned Judge ought not to have condoned the delay in such scenario. He has grossly erred in readily accepting whatever has been stated in the Application as a gospel truth, when the circumstances discussed herein above to which the learned Judge was alive to, as can be seen from the impugned judgment and order.

9. The Writ Petition is allowed. The impugned order is quashed and set aside. The Rule is made absolute.

(MANGESH S. PATIL, J.)

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