

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

**CIVIL APPLICATION NO.3788 OF 2020
IN SA/851/2012**

**SUDHIR PANDIT KULKARNI DECEASED LRS. PRATIBHA AND OTHERS
VERSUS
KAUTIK TOTARAM FARKHANDE AND ANOTHER**

...
Advocate for Applicants : Mr. Siddharha B. Yawalkar
Advocate for Respondent No.1 : Mr. A. D. Shinde
...

CORAM : MANGESH S. PATIL, J.

DATED : 25 APRIL 2022

PER COURT :

1. This is an application for setting aside abatement on account of death of sole appellant, who died on 23 March 2014 with a prayer to condone the delay of 2084 days in moving the application.
2. Learned advocate Mr. Yawalkar for the LR's of the appellant submit that the deceased had died suddenly soon after filing of the second appeal. The appellants are the widow, sons and married daughters. The LR's of deceased were not aware about this second appeal which has resulted in the delay in moving this application.
3. Learned advocate Mr. Yawalkar would further submit that the dispute pertains to right of easement. There is nothing to demonstrate that

the delay was intentional and deliberate. The second appeal is of the year 2012 and still awaiting listing of the matter for admission. He would, therefore, submit that the delay may be condoned and the abatement be set aside.

4. Learned advocate Mr. Shinde for the respondent no.1 strongly opposes the application. He submits that the delay is huge and cannot be condoned. He would place reliance on the decision in the matter of **Shanti Devi and Ors. Vs. Kaushaliya Devi; 2016 (16) SCC 565**.

5. Though it is clear that the sole appellant has died and the present applicants being his legal representatives were aware about his death. However, the applicants are coming with a specific case that they had no knowledge about pendency of the second appeal.

6. Apart from the fact that the fact has not been traversed by the other side, it is also a matter of record that the second appeal is awaiting admission since the date of filing in the year 2012. The decision in the matter of **Perumon Bhagvathy Devaswom, Perinadu Village Vs. Bhargavi Amma (Dead) by LRS and Ors.; (2008) 8 SCC 321**, may not be applicable in strict sense in as much as in that matter, the respondent had died about which the appellant did not have any knowledge and that the matter was awaiting listing for years together.

7. However, the principle to be borne in mind is that once an appeal

is filed in the High Court, the clients would usually rely upon further communication by the advocate through whom they prosecute it.

8. As is mentioned hereinabove, the applicants have specifically contended that they had no knowledge about filing of the appeal and the deceased had died suddenly.

9. Admittedly, the second appeal is awaiting listing for admission since the year 2012. The dispute pertains to a right of easement. The applicants were not to be benefited by allowing their right to get lapsed on such technicalities. Apart from the fact that the cause is not being traversed, the delay does not seem to be either deliberate or intentional. The decision in the matter of Shanti Devi (Supra), in my considered view is not applicable to the fact situation of the present matter.

10. Considering the aforementioned facts and circumstances, the application is allowed and the delay is condoned, subject to the applicants depositing costs of Rs. 2,000/- (Rupees Two Thousand Only) in this Court within two weeks from today. The respondent No.1 shall be entitled to claim such costs on being deposited and the abatement shall stand set aside.

(MANGESH S. PATIL, J.)

Tandale/-