

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 493 OF 2022
IN
WRIT PETITION NO. 3953 OF 1999

Maruti Govind Shelke Since decd.

Through legal heirs and ors.

..Applicants

V/s.

Narhar Khandu Kulkarni

since decd. Thr his legal heirs

..Respondents

SNEHA
NITIN
CHAVAN

Digitally signed
by SNEHA
NITIN CHAVAN
Date: 2022.09.14
11:45:46 +0530

Mr. Suresh Sabrad for the Applicants.

Mr. T.S. Ingale for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 13 SEPTEMBER 2022

P.C.

. This is an application for condonation of delay, for bringing legal heirs of sole Respondent on record as well as for restoration of Writ Petition by recalling the order dated 16.08.2016 passed by the learned Registrar (Judicial-I) of this Court.

2. I have heard learned counsel for the parties. Perused record.

3. It appears that the sole Respondent expired on 13.01.2014 and intimation about his death was given to the Advocate for the

Applicants/Petitioners on 17.09.2014. This aspect is not even disputed. In spite of the same, no steps were taken to bring legal representatives of the sole Respondent on record. The matter was eventually listed before the Registrar on 16.08.2016, on which date, the Applicants/Petitioners were represented by an Advocate. In spite of that no steps were taken even in August 2016 and the learned Registrar by an order dated 16.08.2016 has disposed of the writ petition as abated. Even after this order was passed in the year 2016, no steps have been taken to seek restoration of the petition till filing of the present application somewhere on 19.01.2022.

4. The learned counsel for the Applicants strenuously urged that the Applicants have very good case on merits as the impugned order overlooks certain aspects which are matters of record. He submits that a party cannot be made to suffer on account of the fault of the Advocate. It is submitted that there is no lapse as such on the part of the party for taking steps for bringing legal heirs on record. He, therefore, submitted that the application be allowed and the delay be condoned.

5. The learned counsel for the Respondent has submitted that there is gross delay and laches in prosecuting the petition. It is submitted that in spite of the fact that the factum of death was intimated to the learned counsel for the Applicants, no steps were taken and even after, the petition was disposed of as abated in the

year 2016, there is substantial delay in seeking restoration which according to the learned counsel is more than 8 years.

6. I have given my anxious consideration to the rival circumstances and the submissions made.

7. The facts are clearly borne out of the record. As noticed earlier, it is not in dispute that factum of death was brought to the notice of learned counsel for the Petitioner and perusal of the order dated 16.08.2016 also shows that the Petitioners were represented by an Advocate on that date. In spite of this, no steps were taken to bring the legal representatives on record. That apart even after the order was passed, there is a period of more than 5 years which was elapsed before the present application for condonation of delay and restoration is filed.

8. The Supreme Court in the case of *Esha Bhattacharjee v/s. Managing Committee of Raghunathpur Nafar Academy and Ors.*¹ after taking a survey of various decisions holding the field has culled out the principles which are germane while considering a prayer for condonation of delay. The Supreme court has inter alia held that although the court can take a liberal view in respect of delay which is of short duration, in matters where there is a substantial/gross/inordinate delay, a strict view has to be taken. The Supreme Court has also deprecated the tendency to pursue delay as a non serious matter.

1 (2013) 12 SCC 649

9. It is necessary to emphasise that the law also contemplates finality of litigation at some point of time. The learned counsel for the Respondent submitted that original proceedings taken out by the landlord, seeking possession are of the year 1961, after which more than 60 years have passed.

10. The contention that Applicants were not aware of passing of the order dated 16.08.2016 also cannot be accepted in view of the fact that the Applicants were represented on that date before the Registrar.

11. Considering the over all circumstances, I do not find that this is a fit case for exercise of discretion to condone the delay as delay has not been properly explained on the basis of sufficient cause which is *sine qua non* for any order of condonation of delay.

12. In the result, application is dismissed with no order as to costs.

C.V. BHADANG, J.