

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

945 CIVIL APPLICATION NO.5940 OF 2023 IN SA/625/1992

SHANKAR SHIVRAM GUNJALE DIED LRS. DURGABAI AND
OTHERS
VERSUS
DHANSING RAOJI RATHOD and OTHERS.

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Advocate for Applicants : Ms.PV. Langhe h/f VR. Langhe
Advocate for Respondents : Mr. VD. Khivesara h/f A.S. Bajaj for R-1
to 5, Mr. K.R. Yadav h/f S.S. Shinde For R/6.

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CORAM : S. G. CHAPALGAONKAR, J.
Dated: August 02, 2023

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PER COURT :-

1. Leave to amend the application and add prayer for setting aside the abatement. Amendment to be carried out forthwith.

2. By way of this application, the applicants seeks permission to bring on record legal representatives of deceased appellant no.1 Shankar Gunjale, who died on 28.7.2018. Prayer is made for condonation of delay of 1615 days in filing this application as well as to set aside the abatement order.

3. Ms. Langhe, learned counsel appearing for the applicants submits that Second Appeal was admitted in the year 1993 after considering the substantial question of law. Thereafter, it was kept in dormant condition. There was no communication between the applicants/appellants and his advocate. The appellant no.1 Shankar died on 28.7.2018. His L.Rs. were also not aware about pendency of the proceeding. When this second appeal was posted for final hearing, notices were issued by this Court in the

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year 2022 to all the parties; at that time, the applicants got knowledge about pendency of the second appeal. Immediately, the applicants approached to the advocate and filed this application. The delay caused in filing this application is unintentional. The applicants have meritorious case in second appeal. They are fighting for valuable rights in the immovable property. If the application is allowed, no prejudice would be caused to the respondents. On the other hand, litigation can be decided on its own merit.

4. Per contra, learned counsel appearing for the respondents opposed the application on the ground that there is inordinate delay in filing the present application. If there was no communication with the advocate, it is sheer negligence of the applicants. He submits that valuable rights have been accrued in favour of the respondents on account of failure on the part of the applicants to act in diligent manner.

5. Having considered the submissions advanced, it is apparent that second appeal is pending since the year 1992 and it has been admitted in the year 1993. Thereafter, it was not listed for hearing. On 20.6.2022 second appeal was posted on the board for final hearing. The learned advocate appearing for the applicants/appellants informed to the Court that he could not establish contact with the appellant and proposed to issue notice on Court motion. Similar submissions were advanced on 14.10.2022 when, learned counsel appearing for the appellants placed on record unserved envelope addressed to appellants with endorsement "incomplete address, not claimed". Taking note of the aforesaid facts, this Court had issued notices to the parties. It is, therefore, evident that because of death of the appellant, even advocate was

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not in position to make communication with the appellants or his legal representatives. The contention of the applicants that after issuance of the notice by this Court, they got knowledge of the present proceeding appears to be trust worthy. Under these circumstances, the explanation of delay in filing present application would constitute sufficient cause.

6. The Supreme Court of India in the matter of **Ram Nath Sao alias Ram Nath Sahu and others Vs. Gobardhan Sao and others reported in AIR 2002 Supreme Court 1201** observed that there cannot be straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. The Court 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. It is further observed that length of delay is no matter, acceptability of the explanation is the only criterion. similar view is reiterated by this Court in the case of **Shankar Deoji Sonawane since deceased through L.Rs. and others Vs. Sheku Kondaji Kale reported in 2019 (5) Mh.L.J. 466** wherein in identical circumstances of dismissal of the second appeal admitted in the year 1994 delay of 2074 days is condoned considering the identical reasons. This Court considered the law laid down by the Supreme Court in case of **Banwari Lal (D) by LRs and another Vs. Balbir Singh reported in 2015 AIR (SC) 3573**.

7. Learned counsel appearing for the respondents relied upon the observations of the Supreme Court in the case of **Balwant Singh (Dead) Vs. Jagdish Singh and others reported in (2010) 8 Supreme Court Cases 685** to contend that sufficient cause implies presence of legal and adequate reasons. While interpreting sufficient cause, the Court shall also consider the rights accrued in

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favour of the respondents. Party who is negligent over his right cannot be given leverage by liberal interpretation in absence of some plausible explanation.

8. In the facts of the present case, it is abundantly clear that the applicants were not having any knowledge regarding pendency of the appeal and advocate engaged by the deceased could not establish contact with them. For the reasons stated above, the application deserves favourable consideration. Hence, following order is passed.

O R D E R

- i. The application is allowed in terms of prayer clause “**A-1, B and C.**”
- ii. Civil application is disposed off.
- iii. Amendment be carried out within a period of two weeks from today.

(S. G. CHAPALGAONKAR, J.)

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