

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

51 CIVIL APPLICATION NO.795 OF 2021 IN SAST/25948/2020
WITH
SAST/25948/2020

MINA SHRIKANT RANMALKAR AND OTHERS
VERSUS
RAGHUVIR RAMCHANDRA RAHINJ AND OTHERS

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Advocate for Applicants : Mr. G.K Naik Thigle
Advocate for Respondents : Mr. S.P. Salgar h/f N.V. Gaware For R/9
10-a To 10-d And 12, Mr. S.M. Gunjkar h/f S.R. Deshpande 4 to 7,
15 to 19.

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CORAM : S. G. CHAPALGAONKAR, J.
Dated: August 17, 2023

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PER COURT :-

1. By this application, the applicants seek to condone the delay of 572 days caused in filing the second appeal.
2. Mr. Thigle, learned counsel appearing for the applicants submit that father of applicant nos.2 and 3 and husband of applicant no.1 was seriously ill and taking medical treatment since 2015. Ultimately, he expired on 7.4.2022. Since the applicants were busy in attending the patient, they could not file present appeal within time. Mr. Thigle, would further submit that due to out-brake of Covid-19 Pandemic further delay is caused and as per general directions of the Supreme Court of India, period from March 2020 onwards is pardonable and cannot be counted for the delay. He would submit that parties are litigating for the rights over immovable property. In such situation, the term 'sufficient cause' has to be liberally construed. In support of his contentions, he relies upon the judgment of the Supreme Court of India in the matter of **Sridevi Datla Vs. Union of India and others** reported in (2021) 5

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SCC 321 and Perumon Bhagvathy Devaswom Vs. Bhargavi Amma (Dead) by L.Rs. and others reported in **2008 (8) SCC 321**. He would submit that the reasonable pragmatic view requires to be taken depending upon the facts and circumstances of each case. Term 'sufficient cause' appearing in section 5 of the Limitation Act should receive liberal construction so as to advance substantial justice. He would submit that unless it is pointed out that delay is on account of dilatory tactics or deliberate needs to be condoned.

3. Per contra, learned counsel appearing for the respondents strenuously opposed the contentions. He would submit that there is delay of 572 days. Explanation sought to be offered do not constitute sufficient cause within the meaning section 5 of the Act. He submit that father of the applicant nos.2 and 3 was under medical supervision from 2015 and there is nothing to indicate that during relevant time, he was hospitalized. Various laboratory reports shows routine check up and do not connote serious illness that will require attendance by all three applicants. He would further rely upon the judgment of the Supreme Court in the matter of **Basawaraj and another Vs Special Land Acquisition Officer** reported in **2013 (14) SCC 81** to contend that *the statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale*. He would submit that unless there is explanation for such an inordinate delay, the rights accrued in favour of the respondents due to negligent act of applicants cannot be taken away.

4. Having considered the submissions advanced by respective parties, what is to be gathered from the pleadings of the parties is 'as to whether the applicants have offered reasonable explanation for the delay.' The term "sufficient cause" appearing in section 5 of the Act has been interpreted time and again by the Supreme Court of India. Now, it is well settled that liberal interpretation has to be adopted particularly when the matter pertains to rights of the parties over immovable property. The applicants need not explain delay of each and every day, but they have to place on record the reasons that precluded them from approaching the Court within prescribed time. Perusal of the application shows that father of the applicant nos.2 and 3 and husband of applicant no.1 was under medical supervision. There are various laboratory reports that indicate that Shrikant Ranmalkar was under medical supervision and frequently referred for the various pathological and other tests. Ultimately, he died on 7.4.2022. Documentary evidence placed on record appears to be in tune with the pleadings in the application. Pertinently, the appeal is filed during the pandemic period. By general orders of the Supreme Court of India, limitation period was frozen from March 2021 onwards. If the period from March 2020 to November 2020 is excluded, the delay appears to be explained with plausible reasons. However, to adjust the equities it would be appropriate to award some costs. Hence, the order.

ORDER

- i. Civil application is allowed.
- ii. Delay caused in filing the second appeal is condoned subject to payment of costs of Rs.10,000/- by the applicants to be deposited with the "Library, Advocates Association of Bombay High Court, at Aurangabad", within a period of 2 weeks from today.

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- iii. On registration of appeal, post the appeal for admission on 11.9.2023.
- iv. Civil application is disposed off.

(S. G. CHAPALGAONKAR, J.)

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