



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.3831 OF 2024
IN
SECOND APPEAL NO.880 OF 2016

Sojabai Babulal Chaudhari ...Applicant

Versus

Ramdas Shivram Chaudhari (deceased),
through Legal Heirs.

1. Sindhubai Ramdas Chaudhari,
2. Sanjay Ramdas Chaudhari,
3. Prashant Ramdas Chaudhari. ...Respondents

WITH
CIVIL APPLICATION NO.16079 OF 2016
IN
SECOND APPEAL NO.880 OF 2016

Sojabai Babulal Chaudhari ...Applicant

Versus

Ramdas Shivram Chaudhari ...Respondent

WITH
SECOND APPEAL NO.880 OF 2016

Sojabai Babulal Chaudhari ...Appellant

Versus

Ramdas Shivram Chaudhari ...Respondent

Adv. N. L. Chaudhari for Applicant.

Mr. M. H. Patil for Respondent Nos.1 to 3.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 19th DECEMBER 2024.

JUDGMENT:-

1. The present application is filed seeking permission to bring on record legal heirs of deceased-Respondent in second appeal by condoning delay of 1518 days caused in filing application.

2. The Second appeal arises out of judgment and decree dated 26th July 2016 passed by learned District Judge, Dhule in Regular Civil Appeal No.46 of 2006.

3. Applicant/Plaintiff had approached Trial Court seeking the relief of declaration of ownership and perpetual injunction in respect of land Gat No.53/1 situated at Shirud Jamne, Taluka and District Dhule. The suit was partly decreed counter claim was dismissed. Defendant filed appeal before District Court. Plaintiff had also filed cross-objection. The District Judge allowed appeal setting aside decree of Trial Court. Whereas counter claim of Defendant has been allowed and Plaintiff is directed to handover possession of suit property to Defendant. Plaintiff's claim under cross-objection for declaration of ownership was also dismissed.

4. Plaintiff filed present second appeal. Meanwhile, sole Respondent/Defendant Ramdas Shivaram Chaudhari died on 21st November 2019. The present application is filed for setting aside

abatement and bringing legal heirs of Defendant with prayer to condone the delay of 1518 days caused in filing present application.

5. Mr. Nitin Chaudhari, learned Advocate appearing for Applicant submits that due to lack of knowledge about procedure in appeal, legal heirs of Defendant could not be taken on record within limitation, as such delay is unintentional that may be condoned.

6. Per contra, Mr. M. H. Patil, learned Advocate appearing for legal heirs of deceased-Respondent relying upon Affidavit-in-reply submits that Applicant and Respondents are close relatives. They are residents of same village. It is stated that Applicant is real sister-in-law of deceased-Respondent, even the son of Respondent namely Pramod and his wife attended the last rituals of deceased Respondent. There is no explanation for inordinate delay.

7. Having considered submissions advanced, it can be observed that the impugned judgment and decree of Appellate Court has been passed in year 2016. Sole Respondent died on 21st November 2019 during pendency of second appeal. There is no dispute that parties are *inter-se* close relatives. The Appellant is a

sister-in-law of deceased-Respondent. In this background, it cannot be said that Applicant had no knowledge about death of Respondent. Pertinently, in pursuance to the impugned decree Regular Darkhast No.25 of 2024 has been filed before learned Civil Judge, Senior Division, Dhule. In that proceeding, the notice was served upon Applicant. She did not appear in response to notice but moved present application when possession warrant was likely to be issued. Apparently, there is no explanation for the delay of about 4.5 years in moving the application for bringing legal heirs of sole Respondent.

8. It is trite that if party is not acting diligently in conduct of proceeding, he will have to blame for himself. Section 3 of Limitation Act bars the action unless the sufficient cause is shown for condoning the delay. In present case, there is inordinate unexplained delay in bringing legal heirs of sole Respondent. It create rights in favour of Respondent. In civil litigation, the Court is required to take into consideration aforesaid aspect. They delay cannot be condoned unless sufficient cause is made out. From pleading in Application or additional affidavit, no reason can be carved out to justify inordinate delay. In this background, observations of Supreme Court in case of ***P K. Ramachandran Vs.***

State of Kerala¹, can be referred which reads as under:-

¹ (1997) 7 SCC 556

“6. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribed and the courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the miscellaneous first appeal shall stand dismissed as barred by time. No costs.”

9. Although, refusing to condone the delay may cause certain hardship, but when there is gross negligence attributable to Applicant, there is no justifiable reason to entertain the application. Further it can be observed that the appeal is filed in year 2016, thereafter, no steps were taken to proceed with the matter. It was just kept in dormant condition for about 8 years that shows laxity on the part of Applicant. The matter is moved when execution of decree reached at final stage. Hence, application stands rejected.

(S. G. CHAPALGAONKAR, J.)

10. At this stage, learned Advocate for Applicant, prays that operation of this order be stayed for eight weeks, so as to enable Applicant to approach Hon'ble Supreme Court. In that view of the matter, operation and affect of this order shall remain in abeyance for eight weeks from today.

(S. G. CHAPALGAONKAR, J.)