



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

**902 CIVIL APPLICATION NO. 10950 OF 2023
IN SECOND APPEAL NO. 251 OF 2023**

**ANJALI RAMAKANT ATTARDE
VERSUS
RAVINDRA ATMARAM SONAWANE AND OTHERS**

.....
Advocate for Applicant : Mr. Tripathi Sushilkumar H.
Advocate for Respondents : Mr. Bhandari Anand P
.....

**CORAM : Y. G. KHOBRAGADE, J.
DATE : 04.04.2024**

ORDER :-

1. Heard both the sides at length.
2. Besides oral arguments, both the parties have tendered their written notes of arguments.
3. Having regard to the submissions canvassed on behalf of both sides, I have gone through the record. On face of record, it prima facie appears that, the applicant has filed present composite application for condonation of delay of 593 days caused in bringing legal heirs on record of deceased Respondent No. 8, setting aside of abatement of appeal and sought permission to bring legal heirs of deceased respondent No.8 on record.

4. Learned counsel appearing for the Applicant submits that, the respondent/plaintiff had filed Special Civil Suit No. 62/2001 for specific performance of contract. On 02.05.2015, said suit was decreed against the present Appellant/defendant. Being aggrieved by said judgment and decree, the present applicant/appellant have preferred an appeal under Section 96 of Civil Procedure Code before the learned First Appellate Court, however, while preferring the appeal delay of 2 years 1 month and 20 days was caused. Therefore, the appellant filed Civil M. A. No.250/2017 for condonation of delay before the First Appellate Court. However, on 10.04.2023, the learned District Judge-5, Jalgaon refused to condone the delay. Therefore, the appellant/original defendant preferred present appeal u/s 100 of Civil Procedure Code. On 02.05.2023, this Court issued notice to the non-applicants/respondents, however, notice of respondent No.8 returned unserved with the endorsement that, the respondent No.8-Rukminibai Dattatray Rade has died on 17.10.2021.

5. The learned counsel for the applicant has submits that, the deceased-respondent No. 8 was residing at village Bhadli, Tq. & Dist. Jalgaon and the applicant is residing at Indore, Madhya Pradesh and was not aware about the death of respondent No.8, but after receipt of Bailiff report in the month of June-2023, the applicant came to know about the death of

respondent No.8. Thereafter, the names of legal heirs of deceased-respondent No.8 were gathered and filed present application for which delay of 593 days is caused, which is bonafide and substantial, hence, prayed for condonation of delay as well as setting aside of abatement of appeal and further sought permission to bring the legal heirs of deceased-respondent No.8 on record.

6. In support of these submissions the learned counsel appearing for the applicants placed reliance on the following cases :

i) Perumon Bhagvathy Devaswom Perinadu Village V/s. Bhargavi Amma (Dead) by L.Rs and Ors.,; AIR 2009 SC (Supp) 886.

ii) Narhari s/o Shrawan Moon (now deceased) through L.Rs and Ors V/s. Silas s/o Kannobaji Punwatkar & Ors.; 2022 (3) Mh.L.J. 788.

iii) Yashwant Hariparit (deceased) through legal heir Sandip Balkrishna Parit & Ors. V/s. Sunita Ashok Bhandare & Ors.; (2020) 2 Mh.L.J. 191.

iv) Unreported order of this Court dated 07.03.2024 passed in Civil Application No.2636/2024 in Second Appeal No.890/2016. (Sandhya Santosh Kyatamwar L.Rs. Santosh Sayanna Kyatamwar & Ors. V/s. Yeshwant Dattatrya Dipak and Ors.)

v) Sonerao Sadashivrao Patil and Anr. V/s. Godawaribai Laxmansingh Gahirewar and Ors.; AIR 1999 BOMBAY 235,

7. Per contra, learned counsel appearing for the non-applicants strongly resisted the application and put-forth following grounds:

- a. Appellant had the knowledge of passing of Judgment and Decree.
- b. Appellant had been to Advocate of High Court. However, neither the name of said Advocate is disclosed, nor any witness is examined on said point.
- c. The provisions of Maharashtra Civil Courts Act were amended on 1.09.2015, the Application for condonation of delay is filed in the month of July 2017. For the intervening period, there is no explanation offered.
- d. The Appellant is having knowledge of all the proceedings. Suppressing the Special Civil Suit No.62/2001 filed by the Respondents, the appellant has wisely filed Regular Civil Suit No.11/2009 before the Civil Court, Jalgaon without impleading the Respondents Nos. 1 and 2.
- e. Appellant has participated in the proceedings before Executing Court and also in the suit through the same Advocate.
- f. The delay caused is intentional. No documents supporting the reasons mentioned in Application were produced.

8. Further, the learned counsel for the non-applicant In support of his submissions has relied on the following cases :

i) P.K. Ramchandran V/s State of Kerala and another, reported in AIR 1998 SC 2276.

ii) Maniben Devraj Shaha V/s Municipal Corporation Mumbai, reported in AIR 2012 SC 1629.

9. It is submitted that, the applicant is a 55 year old lady residing at

Indore, Madhya Pradesh and litigating the matter at Jalgaon in respect of the landed property. The applicant fairly stated that, she has preferred an appeal challenging the judgment and order dated 10.04.2023 passed by the learned District Judge-5, Jalgaon in Civil M. A. No. 250/2017, whereby her prayer for condonation of delay in filing the appeal has been rejected. This Court issued notice and in pursuance of the Bailiff's report, first time she came to know that, the respondent No.8-Rukminibai Dattatray Rade has expired on 17.10.2021. Thereafter, the applicant collected death certificate of the respondent No. 8 as well as names of legal heirs and thereafter filed the present application for which the delay of 593 has occurred.

10. In the case of **Perumon Bhagvathy Devaswom Perinadu Village** cited (supra) the Hon'ble Supreme Court laid down principles for consideration of applications for setting aside of abatement, condonation of delay which are as under:

“(i) The words "sufficient cause" in section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.

(ii) In considering reasons for condonation of delay, Courts are liberal with reference to applications for setting aside abatement, than other cases. Courts tend to set aside abatement and decide matter on merits, rather than terminate appeal on ground of abatement.

(iii) *Decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.*

(iv) *Extent or degree of leniency to be shown by a Court depends on nature of application and facts and circumstances of the case. For example, Courts view delays in making applications in a pending appeal more leniently than delays in institution of an appeal. Courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses.*

(v) *Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, Courts do not expect appellant to be diligent. Where an appeal is admitted by High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit Court or his lawyer every few weeks to ascertain position nor keep checking whether contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal."*

11. In case of ***Sonerao Sadashivrao Patil, cited supra***, Co-ordinate bench of this court has held that, the Court is having discretionary power to condone the delay and discretionary power should be exercised to advance substantial justice.

12. No doubt the learned counsel for the non-applicants relied on various case laws, however, nothing been brought on record as to how the applicant was negligent in filing the application for condonation of delay and setting aside of abatement as against respondent No.8. It trite settled principle of law that, if the delay is explained satisfactorily, the court should adopt the liberal approach and condone the delay by taking into consideration guide

lines laid down in case of **Perumon Bhagvathy Devaswom Perinadu Village** cited (supra). Therefore, considering the grounds set out in the application as well as facts and circumstances of the case, I am inclined to grant the present application and proceed to pass the following order:

ORDER:

- i) The civil application is allowed.
- ii) The delay of 593 days caused in filing the application for bringing the legal heirs of respondent No.8 on record is hereby condoned.
- iii) The abatement is set aside as against respondent No.8.
- iv) The applicant is hereby permitted to bring the legal heirs of deceased-respondent No.8 on record.
- v) Necessary amendment be carried out within a period two weeks from today.
- vi) Place the appeal for further consideration on 29.04.2024. Interim relief granted earlier, if any, to continue till the next date.

[Y. G. KHOBRAGADE, J.]