

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.16788 OF 2023

IN

FIRST APPEAL NO.10 OF 2019

Mrs. Helena Louis Rodrigues

Since deceased through legal heirs

Mr. Clive Louis Rodrigues & Ors.

: Applicants

IN THE MATTER BETWEEN

Mrs. Helena Louis Rodrigues (deceased)

: Appellant

Vs.

M/s. Gundecha Builders & Ors.

: Respondents

Adv. Amey D. Nayak i/by Adv. Herbert Noronha for the Applicants.

Adv. Shihir Joshi i/by. Mr. Tejas Shah for the Respondent No.1.

CORAM : KISHORE C. SANT, J.

DATE : 19th JANUARY, 2024

PC. :

1. Heard the parties.

2. This Application is filed for bringing on record legal heirs of deceased Applicant/Appellant Helena Louis Rodrigues. She died on 18th January, 2022. There is delay of 601 days. The application is vehemently opposed by the learned Advocate for the Respondents by relying upon the judgment in the case of Basawraj and Another Vs. Spl. Land Acquisition

Officer, reported in 2013 DGLS(SC) Page 672 and in the case of Isha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & others reported in 2013 DGLS(SC) Page 743.

3. Learned Advocate for the Respondent vehemently argued that in this case the Applicant No.1 was all the while aware of the procedure. He had even approached the Hon'ble Apex Court by filing SLP challenging the order of refusal of stay by this Court while admitting the matter. He thus submits that once the party has knowledge it was necessary for him to file Applications immediately.

4. The Hon'ble Apex Court has held that, it is necessary for condonation of delay to show sufficient cause so that it depend upon case to case. There is no absolute ratio let down that the delay deserves to be dondone. Considering facts in this case that the delay is of 601 days. It is stated in the application that during the Corona period they loss the track of the manner and there were multiple deaths in the family. Considering the reason delay deserves to be condoned.

5. However in the facts of this case this Court finds that delay needs to be condoned by imposing some costs. Hence the following order.

ORDER

a) Application stands allowed.

- b) The legal heirs of deceased Helen Louis Rodrigues be brought on record. Necessary amendment in the appeal memo to be carried out within a period of four weeks from today.
- c) This order is subject to payment of costs of Rs.20,000/- to be paid to the Respondent.
- d) Application stands disposed of.

(KISHORE C. SANT, J.)