



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

CIVIL REVISION APPLICATION NO. 216 OF 2023

SARLA GOPAL MARMAT AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THR. COLLECTOR AND
OTHERS

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Mr. Taberzuddin R. Quadri and Mr. Adil Z. Biyabani, Advocate for the Applicants.

Mr. D. B. Bhange, AGP for Respondent-State.

Mr. S. S. Koche, Advocate for Respondent Nos.2 to 5.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 10th FEBRUARY, 2025.**

P.C.:-

1. The applicants impugn the order dated 15.09.2023 passed by the Ad-hoc District Judge, Aurangabad in Civil M.A. No.279/2018.
2. The respondent nos.2 to 5 filed M.A.R.J.I. No.175/2015 before the Civil Judge, Senior Division, Aurangabad seeking issuance of heirship certificate in respect of Late Gopal Gabbulal Marmat. The Trial Court allowed the application holding that respondent nos.2 to 5 and applicant no.2 are legal heirs of deceased. However, claim of the applicant has been declined.
3. Aggrieved by order dated 02.07.2018, the applicants filed Civil Miscellaneous Appeal No. 118/2018 before the District Court, Aurangabad. The Appeal was accompanied with Civil M.A. No.279/2018 praying for condonation of 15 days delay. It is stipulated in the application that because of poverty and lack of knowledge as to the legal proceeding, Appeal could not be filed within time. The application is supported by the affidavit. The learned District Judge after hearing the parties, rejected the

application stating that applicants could not make out sufficient cause to condone the delay.

4. The learned Advocate appearing for the applicants submits that Miscellaneous Civil Appeal was delayed by hardly 12 days. The applicants have not derived any advantage by making delay. There is nothing to show that it was intentional. Therefore, liberal approach ought to have been adopted.

5. The learned Advocate appearing for the respondents, however, supports the impugned order contending that lack of legal knowledge or financial duress cannot be the ground for delay condonation.

6. Having considered submissions advanced, it is apposite to refer to the parameters for condoning the delay laid down by the Supreme Court of India in case of ***Collector, Land Acquisition, Anantnag & Anr. Vs. Katiji & Ors.***¹ wherein it is observed as under:

“4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.”

7. Keeping in mind the aforesaid exposition of law, when delay is only for 12 days, the learned District Judge should have adopted pragmatic approach. True that the explanation as tendered does not pass the test of sufficient cause in strict sense, however, it is for the Courts to see that genuine litigation is not frustrated because

¹ (1987) 2 SCC 107.

of technicalities. The respondents have not demonstrated that delay is intentional or applicants put themselves at advantageous position by making such delay. In that view of the matter, impugned order is not sustainable in law. In result, Civil Revision Application succeeds. Hence, following order:

ORDER

- a. Civil Revision Application is allowed.
- b. The impugned judgment and order dated 15.09.2023 passed by the Ad-hoc District Judge, Aurangabad in Civil M.A. No.279/2018, is hereby quashed and set aside.
- c. Civil M.A. No.279/2018 is allowed.
- d. Delay of 12 days caused in preferring the Civil Miscellaneous Appeal is condoned.
- e. Appeal be registered.
- f. Parties to appear before the District Judge on 28.02.2025.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/February-2025