

Order Passed Below Exh.34 in R.C.A No. 26/2003

1. This is an application filed by the appellant seeking condonation of delay to set-aside abatement of appeal and to bring legal representatives on record.

2. The appellant had made application Ex.32 for abatement and application Exh.36 for taking the legal heirs on record. He contended that the appellant had challenge the decision of this court in Reg. Civil Appeal 599/2000 before the Hon'ble High Court by filing appeal bearing No.36/2021. The appellant has contended that respondent No.1 Bayajabai has died on 25.03.2004, respondent No.4 Motilal has died on 14.04.2019 and respondent No.9 Harnabai @ Laxmibai has died on 12.09.2020. However, the appellant could not bring the legal representatives on record is not deliberate and same may be condoned. The appellant has sought for setting aside abatement of the Appeal and allow him to bring Legal Representatives on record.

3. The respondent has resisted the application contended that there is inordinate delay in making the application for bringing the legal heirs on record. He contended that the reason for the delay has not been properly explained by the appellant. The respondent further contended that the appellant had filed appeal bearing No.36/2021 before the Hon'ble High Court without bringing on record legal heirs of the respondent No.4 Motilal and respondent No.9 Harnabai @ Laxmibai and as such the aforesaid decision in appeal bearing No.36/2021 cannot be considered to be legal. The respondent wished to reject the application.

4. Ld. Advocate Shri. Gund for the appellant contended that it is settled principle of law that the court should have liberal approach in condoning the delay with a view of advance the cause of justice by allowing the parties to get their *lis* decided on merits. He further

contended that the delay has been caused due to reason beyond his control. He further contended that the appellant was prosecuting this appeal before the Hon'ble High Court by filing appeal bearing No.36/2021 and therefore he could not bring legal representatives within period of limitation and as such it can be said that there is sufficient cause to condone the delay in making application within time prescribed by Law.

5. It may be stated here that in every place of delay there can be some lapse on the part of litigant concerned. But, that alone is not enough to turn down his plea to condone delay and thereby shut the door of Court of law to him. Then there is no presumption that delay in approaching the Court is always deliberate. In the present case, appellant's conduct does on the whole warrant to castigate him as an irresponsible litigant as due to uneducated of appellant.

6. That apart the rules of limitation are meant to destroy rights of parties. The Court has to adjudicate the dispute between the parties on its merits to advance sub-national justice. Considering, the reasons put-forth of pendency of appeal before the Hon'ble High Court, I am satisfied that the delay is properly explained and sufficient cause has been shown by the appellant for the delay in preferring this appeal.

7. It may be stated that time and again it is held by Their Lordships of Apex court that term '**sufficient cause**' must receive liberal meaning so as to advance the cause of justice and that too with a concept of reasonableness as it is understood in its general connotation. The delay of too much long but same cannot stated to be deliberate. I do not find any negligence or inaction on the part of the appellant as he should have been guided by his advocate the importance of bringing legal representatives on record. For these reasons, the application for condonation of the delay deserves to be allowed.

8. Therefore the delay for making application to bring Legal Representatives deserves to be condoned. It could be thus justifiable to do so to meet the ends of justice and allow the appellant to bring on record the legal Representatives of the deceased respondent Nos.1, 4 & 9 by condoning the delay for making application in that regard. More so when, I do not find gross negligence or deliberate negligence which would dis-entitled the appellant from bringing the legal representatives on record. Therefore, it is the fit case to exercise discretion to condone delay. But, with cost as the appellant should be compensated this because it would be a salutary approach for the Court that when he condones the delay due to latches on the part of the appellant, it should compensate the other party for his loss. In facts and circumstances, the costs of Rs.5000/- would be reasonable because delay is almost of four and half years in bringing one of the legal representatives on record.

9. In the result, the following order is made :

ORDER

1. The application is allowed.
2. The application for condoning delay in bringing legal representatives on record is allowed, subject to cost of **Rs.5000/- (Rs. Five Thousands only)** to be paid to the respondent by the appellant.
3. The application is accordingly disposed-of.

Date : 20/03/2024.

(**D.S. Ghumare**)
District Judge -1,
Sangamner.