

MHKO050008062008



RCS NO.127/2008.
Sudhakar V/s Balu.

Order passed below Application Exhibit – 183.
(Delay condonatonin)

By filing present Appln., the Plff/s. are praying condonation of delay of 2 years 2 months caused in setting aside the abatement order as regards deceased Deft.No.2 Annasaheb Bapu Bawade who died on 25-07-2020.

(2) Heard. Adv argued that, in the interest of justice, Appln. be allowed; if allowed, no prejudice would be caused to the other side. *Per contra*, main thrust of argument of Adv for the Deft/s. is (i) delay (ii) intentional delay (iii) conduct of the Plff. to protract the *lis.*(iv) non mention of plausible reason (v) adverse affect on their rights.

(3) I have perused Art.120 and 121 of the Limitation Act. Right to sue survive in this case. It is argued that, Deft.No.2 Annasaheb Bapu Bawade survived by his legal heirs. His wife also died on 04-04-2021. It is rule of law that, the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives. I have perused the provisions as envisaged in Order XXII of the Code.

(4) If Appln. is allowed no prejudice would be caused to the other side. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Opportunity of being heard must be given to the party. Principle of natural justice requires to be followed. In order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit, it is necessary to allow the Appln.

(5) The powers to condone delay are in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub-serves the ends of Justice. If Application for condonation of delay is allowed, according to me, it cannot be said that, greater prejudice would be caused. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. In Ramlal, & Chhotelal v. Rewa Coalfields Ltd. [(1962) 2 SCR 762], it has been laid down that in showing sufficient cause to condone the delay, it is not necessary that the Applicant has to explain whole of the period between the date of the judgment till the date of filing the appeal. It is sufficient that the Applicant would explain the delay caused by the period between the last of the dates of limitation and the date on which the Appeal/application is actually filed. Sufficient cause cannot be laid down by hard and fast rules.

(6) If delay is condoned, this court would get an opportunity to hear both the sides and decide the matter on its own merit. Thus, ignoring the technicalities, to do the complete justice and to save the precious time of the court, this court has decided to condone the delay. Hence, the following order :-

ORDER

(i) Application is allowed, subject to costs of Rs.500/-, payable to the Deft/s.

(ii) Delay of 2 years 2 months caused to seek abatement order set aside, is condoned.

(Ganesh A. Ghule)
3rd Joint Civil Judge (Jr.Divn.)
Ichalkaranji.

Date : 06-06-2023.