

:: Order Below Exh.55 In Regular Civil Appeal
No.314/2019 ::

1. Applicant/Appellants have filed application for condonation of delay of 221 days which is caused for taking legal heirs of deceased Respondent No.2 on record. Prayer is also made for setting aside the abatement in respect of Respondent No.2. Appellants have contended that during pendency of appeal Respondent No.2 Arvind Shankar Deshmukh has expired on 17/09/2021.
2. Say of Respondents was called. Ld. Adv. Mr. R.V Oak for Respondents has objected this application on the ground that first notice be issued to legal representatives as they should be heard on this point.
3. Heard Ld. Advocates for both sides. Perused record. Respondents have not submitted any documents. Ld. Adv. for Applicant/Appellant has submitted that Appellants are residing in remote village and they rustic villagers. They are not aware of procedure in case of death of any litigant. After last date of hearing he contacted the Appellants and informed them to remain present. Upon inquiry parties informed that Respondent No.2 is expired. As communication about the death was made after long time from the date of death of Respondent No.2, application could not be filed within time. Per contra Ld. Adv. for Respondents submitted that without hearing the proposed legal representatives it would not be proper to allow the application. Notices should be issued to them.
4. Following points arise for my determination and findings thereon with reasonings are given as follows.

Sr. No.	Points	Findings
1	Whether Applicant shows that there is sufficient cause for delay for taking legal heirs on record ?	Yes.
2	Whether delay should be condoned ?	Yes.
3	Whether there is abatement of Appeal against Respondent No.2 ?	Yes.
4	Whether abatement needs to be set aside ?	Yes.
5	What order ?	Application is allowed subject to cost of Rs. 2,000/-.

:: REASONS ::

As to Points No.1 and 2

5. In support of application Applicant/Appellant has filed affidavit. Original suit is filed for declaration and allotment of share in joint family. In suit Respondent No.2 Arvind Shankar Deshmukh is Defendant No.2. At Exh. 42 deceased Defendant No.2 has filed his written statement. In plaint geneology is given and Defendant No.2 is shown as son of deceased Gunabai. Deceased Gunabai was daughter of deceased Sakharam Sitaram Deshmukh who was the original owner of suit property.

6. From pleadings in plaint it is clear that deceased Sakharam have six legal heirs and present litigation is relating to the rights which is arising in suit property to these legal heirs. As a Defendant No.2 who in present appeal is Respondent No.2 was a party to the suit. When appeal will finally decided then its adjudication may affect the rights of deceased Respondent No.2 and his legal heirs.

7. While considering delay Court has to consider whether there is sufficient cause. The cause given by the Applicant is that they are rustic villager and they are not aware of the procedure. Many times it happens that party due to their inadvertence or their day to day work fails to keep proper track of their matter and to remain in touch with their advocate. Every time it cannot be considered that parties act deliberately. There are many reasons that party fails to comply in perusing their matter in time and with proper steps.

8. Law of limitation and condonation of delay are two effective tools for effective litigation and quick disposal of cases. Law of limitation ensures that the case is filed within the prescribed period so as to avoid unnecessary delays, while condonation of delay is safeguard to the law of limitation and bars certain cases in which delay in filling the suit is justifiable i.e. can be backed by having "sufficient cause". Court has discretionary jurisdiction to determine whether a case is suitable for condonation or not.

9. There is no presumption that delay is caused deliberately. The litigant has nothing to gain by resorting to delay and runs a serious risk. Every days delay must be explained dose not mean that the doctrine is to be applied in an irrational manner. It must be applied in a sensible manner and not a literal. Court has to consider substantial justice so that injustice is not done because of bonafide delay.

As to Point No.3 & 4 :

10. Respondent No.2 has expired on 17/09/2021 and application for setting aside the same is filed on 28/07/2022.

Order 22 of C.P.C. relates to death, marriage and insolvency of parties. In case of death of plaintiff or defendant it is necessary to bring on record the legal heirs/representatives. If legal heirs/representative are not brought on record then the matter against dead person can not be proceeded. On death of party case automatically abates. On death of Respondent No.2 there is automatic abatement therefore it is necessary to set aside the automatic abatement.

11. As parties have blood relations with each other, their appearance is required while deciding the legal issue created in the suit. Appeal is filed in the year 2012 and is pending since then. If prayer of Respondent for issuing notice to LRs. and to decide the application thereafter is considered, then again it will delay the proceeding. Respondent No.2 is party in the suit and appeal against the suit is pending, therefore the decision of appeal is ultimately going to affect the rights of legal representatives of deceased Respondent No.2. Therefore in order to avoid further litigation and for the purpose of curtailing the time, it would be proper if the application is decided without issuing notice to proposed legal representatives of deceased Respondent No.2. So far as delay is concern it can be condone by imposing cost upon Applicant in order to do equity to Respondents. Hence point no.1 to 2 are answered in affirmative. Considering all these aspects and facts of the case I proceed to pass following order.

:: ORDER ::

1. Application is allowed.

2. Delay of 221 days is condoned subject to cost of Rs.2,000/- (Rupees Two Thousand only).
3. Abatement in respect of deceased Respondent No.2 is set aside.
4. Application is disposed of accordingly.

Panvel,
Dated :-28/07/2022

Sd/-
(S. C. Shinde)
District Judge-3, Raigad-Panvel.