

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

**CIVIL APPLICATION NO. 13272 OF 2015
IN SA/468/1991 WITH CA/3720/2000 IN SA/468/1991**

**NANASAHEB MARUTI SAWARE
VERSUS
MAROTI NIVRUTTI SWARE AND OTHERS**

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**Advocate for Applicant : V R Sonwalkar.
Advocate for Respondents : V.D. Patnoorkar For R/2 & 3A
S A is Abated & dismissed against R/1**

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CORAM : SUNIL P. DESHMUKH,J.

DATED : 29TH JANUARY,2016

PER COURT :-

Heard learned counsel Mr.Sonwalkar for applicant and Mr.Patnoorkar for respondents.

2] Learned counsel Mr.Sonwalkar submits that applicant is an old person from rural area and has no educational background. Although respondent no.3 is sister of the applicant, he was neither aware of the legal position nor procedure. Additionally, his financial position is very weak. All these circumstance contributed to cause delay in filing application. It is further submitted that the delay is neither intentional nor deliberate. He is not going to be benefitted by causing deliberate delay.

3] When it was brought to the notice of counsel about the death of sister, it was suggested to file application for condonation of delay and setting aside abatement and bringing legal heirs on record. Accordingly, application thereafter had been moved immediately.

4] Learned counsel for respondent submits that the deceased was sister of the applicant and has further denied that it would not be proper to say that applicant did not know legal position and that his financial position is weak. He therefore, submits that the reasons given cannot be said to be plausible reasons. The position emerges that the applicant had not been aware about legal position. He is an illiterate person. It is to be borne in mind that the deliberate delay would hardly benefit to the applicant. It appears that the applicant has come before Court genuinely and honestly. The Second Appeal has been admitted in 1991. While death has taken place in 2004 and having regard to that upon being made aware, application has been made. I deem it appropriate that without going into intricacies in the matter, interest of justice can be sub served by condoning delay subject to payment of certain costs.

5] Civil Application is allowed in terms of prayer clauses "B" and "C" subject to payment of Rs.5000/- to be deposited in this Court

within six weeks. Upon deposit of costs, legal heirs of respondent no.3 are at liberty to withdraw the same.

(SUNIL P. DESHMUKH,J.)

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