
(2011) 03 GUJ CK 0127
In the Gujarat High Court

Snehlata Ghorpade through Power of Attorney Holder and
Another

APPELLANT

Vs

Princess Sardaraje Gaekwad and Others

RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Article 122

Citation : (2011) 03 GUJ CK 0127

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Ajay S. Jagirdar, for the Appellant; Jaideep B. Verma and Mihir H. Pathak for Respondents 1 - 3, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Thaker, J.—The Petitioners have brought under challenge the order dated 2.8.2008 passed by the learned Trial Court whereby the Court rejected the application (Exhibit-4) seeking condonation of delay caused in preferring the aforesaid Misc. Civil Application ("MCA" for short) No. 72 of 2007.

2. Ordinarily the Court would lean towards liberal construction of "sufficient cause" and would be lenient on the point of "satisfactory explanation" in the matter of delay condonation. Thus, when the order rejecting the exhibit-4 application seeking condonation of delay, is brought under challenge, then it becomes necessary to take note of, in complete details, the relevant facts in light of which the impugned order below exhibit-4 came to be passed. The facts may be summarized thus:

2.1. Somewhere in 1997 a Special Civil Suit was filed by Princes Kamladevi Raje Gaekwad seeking partition and 1/3rd share in the property. The said suit was registered as Special Civil Suit No. 499 of 1987. The present Respondents were the opponents in the said suit.

2.2. In 1992 the original Plaintiff Kamladevi Raje Gaekwad expired, however the heirs/legal representatives of said deceased were not impleaded/joined in the said suit, for long time i.e. until, and even after, the expiry of prescribed limitation for the purpose.

2.3. Consequently the opponents in the suit i.e. present Respondents preferred application seeking abatement of the said Special Civil Suit No. 499 of 1987. Having regard to the facts the learned Trial Court allowed the application by order dated 22.6.1992 and declared the said Special Civil Suit No. 499 of 1987, abated.

2.4. After the said order dated 22.6.1992 was passed, an application came to be filed by one Mr. Rasiklal I. Shah, who claimed to be the legal representative of late Kamladevi Raje Gaekwad (original Plaintiff of Civil Suit No. 499 of 1987) and prayed for being impleaded in the suit as legal representative/heir of said late Kamladevi Raje Gaekwad.

2.5. It is pertinent that the said application was filed on or around 7.8.1992 by above named Mr. Rasiklal I. Shah and not by present Petitioners. The said application was registered as Misc. Civil Application ("MCA" for short) No. 282 of 1992.

2.6. At this stage it is relevant and necessary to note the relief which was prayed for by the applicant (Mr. R.I. Shah) in the said MCA No. 282 of 1992. The para 4(a) and (b) (as per the copy placed on record) read thus:

4(a) The application be allowed and the applicant be added as legal representative/heir of the deceased /Princess kamladevi Raji Gaekwad;

(b)Any other relief/s in the interest of justice be granted;

2.7. The said MCA was filed belatedly i.e. after expiry of limitation. Thus, the applicant had, as claimed, filed a separate application seeking condonation of delay.

2.8. For want of prosecution even the aforesaid application i.e. MCA No. 282 of 1992 (filed by said Mr. Shah) also came to be dismissed vide order dated 13.7.1998.

2.9. It is claimed by the Petitioners that almost 6 months after dismissal (for non-prosecution) of MCA No. 282 of 1992 vide order dated 13.7.1998 second/another Misc. Civil Application ("MCA" for short) No. 28 of 1999 came to be filed on or around 5.2.1999 seeking restoration (as per the copy placed on record) of the said earlier/first MCA No. 282 of 1992.

2.10. It is pertinent that the said second/another MCA No. 28 of 1999 also was filed by said Mr. R.I. Shah and not by the Petitioners.

2.11. For want of prosecution, the above referred second MCA No. 28 of 1999 also came to be dismissed vide order dated 20.1.2006.

2.12. On the other hand somewhere in 2004 the original opponent No. 2 (in the said Suit No. 499 of 1987) i.e. present Respondent No. 2 filed an application and applied for letter of administration.

2.13. Subsequently, after delay of almost 15 months, on or around 4-5-2005 present Petitioners filed an application which came to be registered as Misc. Civil Application ("MCA" for short) No. 72 of 2007 seeking restoration (a per the copy placed on record) of above referred second MCA No. 28 of 1999 (which, in turn was filed for restoration of earlier/first MCA No. 282 of 1992). The said MCA No. 72 of 2007 was the third Miscellaneous Application which came to be filed after the Court declared the suit abated.

2.14. At this stage it is pertinent to note that by the said MCA No. 72 of 2007 present Petitioners sought for restoration of Misc. Civil Application ("MCA" for short) No. 28 of 1999 which was filed by said Mr. R.I. Shah. Differently put, the applicants of MCA No. 72 of 2007 though were not the applicants in MCA No. 28 of 1999 nor in MCA No. 282 of 1992, prayed for restoration of MCA No. 28 of 1999.

2.15. Since the said MCA No. 72 of 2007 also was filed after expiry of limitation the applicants (present Petitioners) also preferred separate application (exhibit-4) in the said MCA No. 72 of 2007 seeking condonation of delay in filing the said application No. 72 of 2007.

2.16. After hearing the parties the learned Trial Court passed the order dated 2.8.2008 and rejected the said Misc. Civil Application No. 72 of 2007. Feeling aggrieved by the said order dated 2.8.2008 the applicants of MCA No. 72 of 2007 have filed present petition.

3. Before proceeding further it is appropriate to note that during hearing it has been given out by the parties that somewhere in 2009 the Bombay High Court has passed order granting letter of administration in favour of present Respondent No. 2 (i.e. original opponent No. 2 in the suit No. 499 of 1987).

3.1. It is also necessary to note that the present petition came to be filed through Power of Attorney Mr., K.G. Kotak and it was being prosecuted also by said Mr. Kotak for sometime. This Court (Coram: Honourable Smt. Justice Abhilasha Kumari) passed order on 3.7.2009 taking note of the Petitioner's submission that the Power of Attorney executed in favour of Shri Kantilal Govindji Kotak, was revoked by Petitioners. However, subsequently an undated communication purportedly signed by the Petitioners declaring that the Power of Attorney dated 30.7.2006 is valid has, been placed on record and in March 2010 said Mr. Kotak has made an affidavit dated 7.3.2010 on behalf of the Petitioners. I have noted aforesaid aspect since it comes out from the record of present petition. However, since any objection from either side has not been raised until hearing came to be concluded, this point may be left at this stage.

4. Mr. K.S. Nanavati, learned Senior Counsel has appeared with Mr. Jagirdar,

learned advocate for the Petitioners. Mr. S.N. Shelat, learned Senior Counsel and Mr. Mihir Thakore, learned Senior Counsel have appeared with Mr. Jaydeep Varma learned advocate and Mr. Mihir Pathak learned advocate for Respondent Nos. 1 to 3.

5. Heard the learned Counsel for the contesting parties and perused the record.

5.1. Learned Counsel for the Petitioners submitted that so far as the MCA No. 28 of 1999 is concerned at one point of time the advocate had argued the application and made his submissions on behalf of the applicants and thereafter the hearing of the MCA No. 28 of 1999 was adjourned for submission to be made by opponents however the said MCA 28 of 1999 came to be dismissed for default which fact came to the notice of the Petitioners only on 10.4.2007 and immediately thereafter on 4.5.2007 the MCA No. 72 of 2007 was filed. He has submitted that after the arguments the advocate of the applicant-present Petitioners were over and the hearing was adjourned for arguments by the opposite side, the presence of the applicants or their advocate was not so vital, so as to dismiss the application. He also submitted that in such circumstances, the Petitioners did not know about the dismissal of MCA No. 28 of 1999, hence delay in filing MCA No. 72 of 2007 ought to have been condoned. The learned Senior Counsel for the Petitioner also submitted that sufficient cause should be construed liberally and a litigant ought to be allowed to contest the case on merits instead of its rejection on technical ground. He also submitted that the facts justify condonation of delay.

5.2. Per contra, the learned Senior Counsel for the Respondent has vehemently opposed the petition and thereby MCA No. 72 of 2007 as well. It has been contended that right from the presentation of the Special Civil Suit No. 499 of 1987 there has been consistent negligence towards the proceedings which have been ignored at every stage. It is evident from the fact that each of the application had to be dismissed for non-prosecution. Even the suit got abated. According to the Respondents all the facts conjointly demonstrate negligence and indifference during the proceedings. The Respondents have also contended that from the point when the suit came to be abated all along the proceedings have been conducted with ill-intention of grabbing share, in the property of late Kamladevi Raje Gaekwad and that therefore also the applications do not deserve to be entertained and has been rightly rejected.

6. At the outset it deserves to be noted that Mr. R.I. Shah, i.e. applicant of Misc. Civil Application No. 282 of 1992 and of MCA No. 28 of 1999 is not before this Court inasmuch as after dismissal of MCA No. 28 of 1999 said Mr. Shah did not file any application seeking restoration of said MCA No. 28 of 1999 and he has not filed MCA No. 72 of 2007 nor he has filed the petition.

7. At this stage one development is required to be noted. It was submitted that during last 20 years certain transactions with regard to certain properties have been entered into as a result of which the properties (which have been sold) are

now in the hands of third party who are bonafide purchasers for value and even the possession is with third party and that while disposing of the property, notice in English and Gujarati dailies were issued, however the Petitioners never raised objection at the relevant time.

8. With regard to the Misc. Civil Application No. 282 of 1992, it is pertinent to note that the learned trial Court has recorded several dates on which the hearing of the said application was adjourned. On perusal of the order it appears that during the period from 28.8.1992 to 13.7.1998, the hearing of the application was adjourned for about 43 times and ultimately the Court passed order dismissing the application for non-prosecution. Any reason justifying the absence on so many occasions during the hearing of said MCA No. 282 of 1992 does not emerge from record.

9. On the other hand, for deciding the MCA No. 72 of 2007 and the application exhibit-4, the learned Trial Court had framed two issues, viz. "(A) Whether applicants are entitled to file present proceedings? (B) Whether there is any legitimate and sufficient reason to condone the delay? While deciding the application and the said issues the learned Court has noted that:

... This Court is aware that in this adjudication the matter on merits and substance cannot be adjudicated as this order is passed for limited issue maintainability of delay condonation, however, because this Court believes that while deciding the delay, the fundamental aspect of competence and legitimate locus standi plays crucial role and for this limited purpose this Court has thought it fit to analysis/appreciate and give observations on the capacity/competency of Petitioners to file present petition with specific reference to the representative capacity in respect of the estate which is subject matter of the subject suit....

41. That present proceeding being preliminarily correlated the claim the property of Lt. Kamladevi as claimed in the original suit though the suit is abated still the claim relates to Lt. Princess Kamladevi and the interests/rights claimed in her behalf, this Court has reason to believe that the present petition is suffering from the deficiency of the absence of locus standi or legitimate competence on the part of Petitioners and therefore, accordingly point No. 1 is ruled in favour of the opponents

(emphasis supplied)

Besides reaching the aforesaid findings, the learned Trial Court also examined this issue as to whether the applicants established "sufficient cause". The Court observed that:

55... However, this Court believes that for seeking condonation of delay what is expected from the Petitioners is to plead the reasons which have accrued after the dismissal before the present petition has been filed. That Petitioner's application seeking condonation of delay is absolutely silent about this core area i.e. the Petitioners have not given any reason in their entire petition seeking

condonation of delay of the period after dismissal of M.C.A. No. 28 of 1999 as caused on 20.1.2006 till present petition has filed. That the circumstances in the M.C.A. No. 28 of 1999 and the stage at which it was dismissed cannot be considered as a ground to condone the delay because the concept of delay and legal operation that starts only after the order dismissing M.C.A. No. 28 of 1999 is passed. That now in this regard, it is required to be refer the provisions of the Limitation Act and particularly, Article 122 on 3rd division of the schedule forming part of limitation to be 30 days for filing restoration of any application dismissed for default from the date of dismissal. In the present matter M.C.A. No. 28 of 1999 is dismissed on 20.1.2006 the period of limitation to file present application is 30 days from 20.1.2006. Whereas the present petition is filed in the month of May, 2007. Thus, the delay of more than one year is neither explained nor justified by pleading any cause leave apart giving any proof. Thus, in absence of any pleading capable to disclose any cause leave apart any sufficient cause, this Court do not find any cause or reason to condone the delay especially when the Petitioners are also suffering from the lack of legitimate competence and locus standi as analyzed in foregoing part of the present order.

97. ... It is important to note here that in the present proceeding after Special Civil Suit No. 499 of 1987 is abated on 22.6.1992, there are consecutively three attempts to restore the suit and the present proceeding is the last in chronology. However, it is confirmed that the period between 1987 to 2007 has gone in by virtue of different proceedings as referred to in the foregoing part of this order. This Court believes that pedantic approach cannot be taken while expecting the explanation/pleading of sufficient reason for condoning delay, but at the same time the persons seeking condonation of delay cannot be allowed to have unfettered licence or liberty to disrespect the very mandate of law. This Court believes that for seeking condonation of delay at least reasons should be mentioned and substantiated in the application.

10. Since the learned trial Court decided the case on the ground of locus standi and also upon examining the justification/sufficient cause (with regard to delay), it would be proper to examine Petitioner's grievance against the impugned order and also the order, from the said two perspective. The issue of locus standi may be considered first.

10.1. The said MCA No. 72 of 2007 came to be filed, on or around 4.5.2007 by present Petitioners. The cause title, describes (as per the copy on record) the applicants thus:

Applicants:

(1) Smt. Snehlata Gorpade (2) Sardar Saiyed Fazal Rehman Sardar Peer Saheb @ Naveb Saheb. Both resident at 8, Sangrila, 3rd Floor, Carmichale Road, Mumbai-400026.

10.2. The said application was filed seeking below mentioned relief:

(A) Your Honour be pleased to recall the order in Misc. Civil Application (Restoration Application) No. 28 of 1999 dated 20.1.2006 and restoring the application, be pleased to decide the case on merits;

(B) If the Your Honour comes to the conclusion regarding delay in filing the present application, the delay may be condoned and the application be taken up for consideration;

(C) Such other and further relief that is just, fit and expedient in the facts and circumstances of the case may be granted.

10.3. Thus, the said MCA No. 72 of 2007 came to be filed by present Petitioners with a request to restore the MCA No. 28 of 1999 (which was filed earlier and was dismissed on ground of non- prosecution by order dated 20.1.2006).

10.4. Therefore it would be necessary to ascertain (a) who had filed the said MCA No. 28 of 1999 and (b) for what relief it was filed.

10.5. The cause title of said MCA No. 28 of 1999 shows (as per the copy placed on record) that it was filed by Mr. Rasiklal Ijjatlal shah (i.e. Mr. R.I. Shah) and describes the applicant thus:

Applicant: Rasiklal Ijjatlal Shah, aged about 60 years, Legal Representative of Deceased, Princess Kamaladevi Raje Gaekwad, r/a 17/25 Navjeevan Society, Lamington Road, Bombay

The relief prayed for in said MCA No. 28 of 1999 reads thus:

(A) Hon''ble Court be pleased to allow this application and restore the Misc. Civil Application No. 282 of 1992.

(B)Any other relief in the interest of justice be granted

Though MCA No. 72 of 2007 was filed for restoration of MCA No. 28 of 1999 the said MCA was not filed by the same person/same applicant who had filed the MCA No. 28 of 1999.

10.6. It is relevant to also note similar details regarding MCA No. 282 of 1992. The cause title of the MCA No. 282 of 1992 describes the applicants thus:

Applicant: Rasiklal Ijjatlal Shah, Aged about 60 years, Legal Representative of deceased Princes Kamladevi Raje Gaekwad, r/at 17/25 Navjivan Society Lamington Road Bombay.

The relief prayed for in the said MCA No. 282 of 1992, reads thus:

4(a) The application be allowed and the applicant be added as legal representative/heir of the deceased /Princess kamladevi Raji Gaekwad;

(b) Any other relief/s in the interest of justice be granted;

10.7. What emerges from the above noted details regarding the applicants in

MCA No. 28 of 1999 and MCA No. 282 of 1992 vis a vis the Misc. Application No. 72 of 2007 is that while the applicant in MCA Nos. 282 of 1992 and 28 of 1999 is the same individual viz. Mr. R.I. Shah, however he is not the applicant of MCA No. 72 of 2007. The said two applications i.e. MCA Nos. 282 of 1992 and 28 of 1999 were filed by Mr. R.I. Shah (who claimed that he was the legal representative/constituted attorney of the original Plaintiff) whereas MCA No. 72 of 2007 was filed by present Petitioners.

10.8. Furthermore, the applicants of MCA No. 72 of 2007 (present Petitioners) prayed for restoration of MCA No. 28 of 1999 though they were neither applicant nor party to the said MCA No. 28 of 1999 and it was not filed by applicants of MCA No. 72 of 2007. Thus, it comes to the position that the original applicant of MCA No. 28 of 1999 (Mr. R.I. Shah) never prayed for restoration of MCA No. 28 of 1999. The same is the position with MCA No. 282 of 1992 inasmuch as the original applicant of said MCA No. 282 of 1992 (Mr. R.I. Shah) has not prayed for its restoration. Instead two other persons, who were undisputedly not the applicants in the said two applications, have come forward and prayed for restoration of MCA 28 of 1999 in which they were not the applicants or party in any manner.

10.9. From the aforesaid facts it becomes clear that present Petitioners are not party, much less applicant/s, in the said two applications being MCA No. 28 of 1999 and MCA No. 282 of 1992 and that therefore the Petitioners are outsider/stranger so far as the said MCA No. 282 of 1992 and MCA No. 28 of 1999 are concerned. Hence, (i) the Petitioners do not have any locus(not being the applicant or a party in the MC As) to prefer such application and/or to pray for restoration of MCA No. 28 of 1999. (ii) More so when the applicant of the two MC As has not come forward with application-request for restoration of the said MCA.

10.10. Not only this but the relief prayed for in the MCA No. 282 of 1992 was that the applicant Mr. R.I. Shah may be added/impleaded as party in the suit and that therefore the Petitioners would even otherwise also (i.e. even if MCA No. 282 of 1992 were to be granted) be outsider as regards the proceedings.

10.11. What is pertinent to note from the aforesaid details is that:

(i) in the said MCA No. 282 of 1992 or in the connected application seeking condonation of delay, any specific prayer seeking that the abatement of the suit may be set aside was not made; and

(ii) the permission to add the applicant i.e. R.I. Shah as the legal representative/heir was prayed for;

(iii) meaning thereby any request to impleaded/add present Petitioners as the heirs or legal representatives of the deceased Plaintiff was not prayed for. Therefore, even if it is assumed that the said application were to be allowed or is allowed then also it would be Mr. R.I. Shah (and not present Petitioners) who would get impleaded (as the legal representatives/heir of the deceased Plaintiff)

in view of the relief prayed for in the said application.

10.12. It is in the above view of the matter and having regard to the facts of the case and the above noted events that the learned Trial Court held that the applicants of MCA No. 72 of 2007 namely Smt. Snehlata Gorpade and Sardar Saiyed Fazal Rahman Sardar Peer Saheb do not have locus to seek restoration of the two applications being MCA No. 28 of 1999 and MCA No. 282 of 1992.

10.13. In this context the learned trial Court has also taken into account the details of the heirs of the deceased Plaintiff Kamladevi Raje Gaekwad and noted that the Petitioners i.e. applicants of MCA No. 72 of 2007 are not the heirs of deceased Plaintiff who is survived by the following heirs:

- (1)KHANDE RAO (Who had given Disclaimer and later Expired)
- (2) UDAY SINGH RAO (since expired)
- (3) Shardaraje (Widow)
- (4) Ujwalaraje(Daughter).

10.14. Now, so far as present petition is concerned it is pertinent to note that in any contention/ground, assailing the trial Court's conclusion regarding Petitioners' locus standi to prefer MCA No. 72 of 2007 and exhibit-4 therein (seeking condonation of delay in filing said MCA No. 72 of 2007) has not been raised or made out.

10.15. Having regard to the aforesaid facts and details it cannot be said that the learned trial Court has committed any error in holding that the Petitioners i.e. the applicants of MCA No. 72 of 2007 have no locus to seek restoration of MCA No. 28 of 1999 in which the Petitioners were not the applicant/party in the said MCA. The reasoning and the conclusion and the final decision do not suffer from any infirmity, either of facts or law and also does not suffer from any jurisdictional error. The Petitioners have failed to establish that they have the locus to file the MCA No. 72 of 2007 seeking restoration of MCA No. 28 of 1999. The petition fails on this count i.e. against the order on the issue regarding locus standi.

11. Now, the trial Court's decision regarding justification and sufficiency of reason to condone delay, may be considered. So far as the trial Court's decision with regard to exhibit-4 application (seeking condonation of delay in filing said MCA No. 72 of 2007) in aforesaid MCA No. 72 of 2007 is concerned, the learned trial Court has, for the reasons recorded in the order, declined to allow the exhibit-4 application. The Petitioners have challenged the said order.

12. In this background, the two aspects involved in present matter viz. (a) the decision of the trial Court that the Petitioners do not have locus to prefer MCA No. 72 of 2007; and (b) the letter of administration is issued in favour of opponent No. 2, would, as such, acquire prominence. When the main/parent application (i.e. MCA No. 72 of 2007) itself is not maintainable the application i.e. exhibit-4 (below which the impugned order is passed) seeking condonation of

delay in filing said main application would not lie and it would not have any significance. In such backdrop, the impugned order below exhibit-4 application declining to condone delay in filing MCA No. 72 of 2007 would, as such and ordinarily, pale into insignificance, particularly because the letter of administration is already issued (even at the time when the impugned order was passed, the letter of administration was already issued) in favour of opponent No. 2. Although the Petitioners claim that they have filed proceedings for revocation of the letter of administration, however undisputedly as on today the letter of administration is not revoked and it is still in force.

13. In this view of the matter the order below exhibit-4 may be examined. The learned trial Court seems to have taken into account (1) the factual aspect that the misc civil application suffered from delay of more than about 15 months (the application was dismissed by order dated 22.1.2006 and the application No. 72 of 2007 was filed on 7.4.2007) and (2) that the applicants (who, as held by the trial court did not have locus to file the application) were trying to revive a litigation which stood abated vide order dated 22.6.1992 i.e. before almost 15 years and (3) that the application on its hand i.e. MCA No. 72 of 2007 was the third application after the suit stood abated and the earlier applications also were preferred belatedly i.e. after delay of almost more than 1 years and were rejected for want of prosecution. (4) thus, at all stages negligence or indifference was shown and then at all stages delay was also caused in filing the applications. (5) Having regard to the aforesaid details coupled with the delay of almost more than 1 year in preferring MCA No. 72 of 2007 the learned trial Court declined the request for condonation of delay and rejected the exhibit-4 application.

14. It is appropriate to note that an additional event also intervened before the trial court passed the impugned order inasmuch as on or around 16.2.2005 the Bombay High Court granted latter of administration in favour of present Respondent No. 2.

In the application (exhibit-4) seeking condonation of delay occurred in filing MCA No. 72 of 2007, the applicant-Petitioners have set-out, at length, the details of the proceedings and events which allegedly took place until the date on which the MCA No. 28 of 1999 was dismissed for non-prosecution i.e. 20.1.2006, however for making out satisfactory explanation and sufficient cause the Petitioners were required to explain how and why delay occurred after the date of order i.e. from 21.1.2006 to 4.5.2007 being the date of filing of MCA No. 72 of 2007 (i.e. for almost 15 months). The need was to offer explanation for consumption or passage of said 15 month's period. In this regard the reason or explanation tendered by the Petitioners is limited i.e. the advocate who was attending the matter had shifted his place of work thus he was not attending the hearing, so was the applicant who also was not keeping track thus the Petitioners did not get the information about the order dated 20.1.2006 till 10.4.2007. Except the said explanation, any other explanation, much less satisfactory explanation has not been tendered. Along with the fact that the Petitioners

tendered such limited explanation as aforesaid it is necessary to recapitulate that:

(a) after the sad demise of Plaintiff Kamladevi Raje Gaekwad, there was negligence and delay in impleading the heirs of the deceased Plaintiff and consequently the trial court had to declare abatement of the suit.

(b) then there was delay in presentation of MCA No. 282 of 1992. The said application and prayer made therein for being impleaded in the suit and for condonation of delay in filing the said application was made by the applicant R.I. Shah and not the Petitioners.

(c) the said MCA No. 282 of 1992 also had to be dismissed for non-prosecution. Meaning thereby there was negligence and insincerity in prosecuting the said MCA No. 282 of 1992.

(d) in the said application No. 282 of 1992 any specific and separate request to set aside the abatement was not made.

(e) any request for impleading present Petitioners in the suit, after setting aside the abatement, was also not made.

(f) since then and until now at any stage or in any application the request to set aside the abatement of the suit does not appear to have been made.

(g) though the MCA No. 282 of 1992 was dismissed vide order dated 13.7.1998, for non-prosecution, and the subsequent application i.e. MCA No. 28 of 1999 (seeking restoration of MCA No. 282 of 1992) was also filed after delay of almost 6 months i.e. on or around 22.1.1999. The said second application also did not contain any prayer concerning the Petitioner (i.e. for impleading the Petitioners in the suit).

(h) on the contrary, in the MCA No. 72 of 2007 said Mr. R.I. Shah had claimed that he was the representative of the deceased Plaintiff and he should be impleaded in the suit as the heir/legal representative of the deceased Plaintiff.

(i) the said MCA No. 28 of 1999 also filed by said Mr. R.I. Shah and the said MCA also got dismissed on ground of non-prosecution, vide order dated 20.1.2006. The only relief prayed for in the said MCA was for restoration of earlier MCA No. 282 of 1992.

(j) then the MCA No. 72 of 2007 came to be filed on or around 4.5.2007. Thus, again the said application also was filed after delay of more than 1 year.

(k) The MCA No. 72 of 2007 came to be filed by new set of persons claiming to be the heirs of the deceased Plaintiff. The application seeking condonation of delay in filing MCA No. 72 of 2007 was filed subsequently and registered as exhibit No. 4 inasmuch as the application was filed on 4.5.2007 while delay condonation application was filed on 7.5.2007.

The Petitioners' explanation regarding delay needs to be considered in light of the above noted facts. In view of the history of negligence and insincerity

towards the proceeding which resulted in one order of abatement of suit and two subsequent orders dismissing the applications for non-prosecution if the said fact are considered conjointly, then they would highlight that the Petitioners' explanation can not be taken as satisfactory explanation and it would also not constitute sufficient cause. The learned trial Court has taken note of all of the aforesaid aspects and observed in the order that:

(38)... That at this juncture, another cardinal fact is required to be referred i.e. the production of letter of administration as produced by the opponent No. 1 and 2. That the said letter of administration is granted by Hon'ble Bombay High Court and thereby the opponent No. 1 has become entitled to manage and administer all the properties of Lt. Princess Kamladevi....

Having noted such facts the learned trial court recorded that:

43... It is important to note here that in the present proceeding after Special Civil Suit No. 499 of 1987 is abated on 22.6.1992, there are consecutively three attempts to restore the suit and the present proceeding is the last in chronology. However, it is confirmed that the period between 1987 to 2007 has gone in by virtue of different proceedings as referred to in the foregoing part of this order. This Court believes that pedantic approach cannot be taken while expecting the explanation/pleading of sufficient reason for condoning delay, but at the same time the persons seeking condonation of delay cannot be allowed to have unfettered licence or liberty to disrespect the very mandate of law. This Court believes that for seeking condonation of delay at least reasons should be mentioned and substantiated in the application.

The court also noted:

55... However, this Court believes that for seeing condonation of delay what is expected from the Petitioners is to plead the reasons which have accrued after the dismissal before the present petition has been filed. That Petitioner's application seeking condonation of delay is absolutely silent about this core area i.e. the Petitioner have not given any reason in their entire petition seeking condonation of delay of the period after dismissal of M.C.A. No. 28 of 1999 as caused on 20.1.2006 till present petition has filed. That the circumstances in the M.A.C. No. 28 of 1999 and the stage at which it was dismissed cannot be considered as a ground to condone the delay because the concept of delay and legal operation that starts only after the order dismissing M.C.A. No. 28 of 1999 is passed. That now in this regard, it is required to refer the provisions of the Limitation Act and particularly, Article 122 of 3rd division of the schedule forming part of limitation to be 30 days for filing restoration of any application dismissed for default from the date of dismissal. In the present matter M.C.A. No. 28 of 1999 is dismissed on 20.1.2006 the period of limitation to file present application is 30 days from 20.1.2006. Whereas the present petition is filed in the month of May, 2007. Thus, the delay of more than one year is neither explained nor justified by pleading any cause leave apart giving any proof. Thus, in absence of

any pleading capable to disclose any cause leave apart any sufficient cause, this Court do not find any cause or reason to condone the delay especially when the Petitioners are also suffering from the lack of legitimate competence and locus standi as analyzed in foregoing part of the present order.

(emphasis supplied)

In the factual background noted hereinabove, the aforesaid observations and conclusions by the learned trial court cannot be faulted. The learned trial Court has not found the explanation satisfactory. The Petitioners have failed to make out sufficient cause and in my view the trial Court's decision does not warrant interference and does not suffer from any infirmity.

15. The aforesaid discussion leaves behind the contention that the advocate of the applicant in MCA No. 28 of 1999 had already made submissions on behalf of the applicant in MCA No. 28 of 1999 hence the said MCA should have been decided on merits and should not have been dismissed for non-prosecution. However as per the Rozkam of MCA No. 28 of 1999 on 18.11.2005 the proceedings were adjourned for arguments of both sides in view of the fact that the Presiding Officer of the court had changed/was transferred. Therefore, the allegation and contention of the Petitioner on the ground that the advocate of the applicant of application No. 28 of 1999 had argued the application from the side of applicants and it was adjourned for the arguments of the opponent is misconceived, devoid of merits and untenable because on account of the change in/transfer of the presiding officer, both sides had to argue the case afresh. This can be further appreciated from the fact that as per the rozkam it appears that originally i.e. before the transfer of the Presiding Officer the applicants' advocate had advanced his arguments on 17.1.2004 and the proceedings were adjourned for the arguments by the opponents. Thereafter consecutively on all dates the learned advocate for the applicants was not available. Subsequently by order dated 11.3.2005 the stage of the arguments of the applicant was declared closed/concluded. The said noting was never objected to by the applicants. Then, the presiding officer (who had heard the arguments on 17.1.2004) was transferred and that therefore the aforesaid noting dated 18.11.2005 came to be made in the Rozkam. Since the presiding officer had changed, it was but obvious that the incumbent presiding officer of the court would give opportunity to make submissions (afresh) to the applicant as well and therefore the said noting dated 18.11.2005 was made. The applicant, however, did not avail the opportunity and therefore after adjourning the hearing to 30.11.2005 and then to 17.12.2005, the learned court heard the arguments of the opponent on 17.12.2005 but since no one was present on behalf of the applicant. the proceedings were adjourned to 20.1.2006 on which date also no one from the side of the applicant was present and that therefore the order came to be passed on 20.1.2006. If despite the change of the presiding officer after the arguments on behalf of the applicant of application No. 28 of 1999 was heard, the court had decided the application on merits after hearing the submission of the opponent alone, then the Petitioners

would have challenged the order on the ground that the court (new incumbent presiding officer) could not have passed the order on merits without hearing the applicants since the presiding officer who heard the applicant's advocate was different from the presiding officer who passed the order after hearing the opponent's arguments. Thus, the convenient contention raised by the Petitioner, who, even otherwise lacks locus and were not the applicants in the said application No. 28 of 1999, does not appeal the court and it is without merit and substance. The said contention, in the facts of the case, deserves to be rejected and is hereby rejected.

16. Except the aforesaid contention the Petitioners have failed to give satisfactory explanation about the delay caused in filing application No. 72 of 2007 and/or failed to make out sufficient cause in support of the request for condonation of delay, and that therefore the decision of the learned trial court and the impugned order do not warrant any interference.

17. In para 6 of said MCA No. 72 of 2007 the Petitioners have, inter alia, stated that "the application submitted by the applicants for bringing the applicants as heirs of deceased Princess Kamladevi Raje Gaekwad is required to be granted...." whereas the fact coming out from the record is that both the earlier applications i.e MCA No. 282 of 1992 and 28 of 1999 were filed by Mr. R.I. Shah and not by the Petitioners. More important is the fact that in MCA No. 282 of 1999 Mr. R.I. Shah, as the applicant, prayed that he should be impleaded in the suit as the heir/representative of the deceased Plaintiff and that therefore the above noted averments and assertion made in application No. 72 of 2007 wherein the Petitioners claimed that they should be brought on record as the heirs of the deceased Plaintiff is not only contrary to and diagonally opposite to the relief prayed for in MCA No. 282 of 1992 but is also such which have never been prayed for in any of the two MC As and has not been prayed for until now before the trial court.

18. The learned Counsel for the Petitioners relied upon the judgment of the Apex Court in the case between Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others, and in the case between Improvement Trust, Ludhiana Vs. Ujagar Singh and Others, in support of the contention that while considering sufficient cause the court ought to give liberal interpretation and strike balance between the rights of the parties. However, in the facts of present case the said decisions do not help the Petitioners in taking their case further, particularly because of the lack of sufficient cause and absence of satisfactory explanation and also in view of the other relevant and distinguishing facts which are unique in present case and distinguish this case from the cited case viz. lack of locus to file the main/parent application and the negligence and indifference consistently shown towards the proceedings and the conflict between the relief prayed for in MCA No. 282 of 1992 and 72 of 2007 and issuance of latter of administration in favour of Respondent No. 2 which order has neither been set aside or even stayed.

The conclusions and decision and the final order by the learned trial court is neither perverse nor does it suffer from any error, much less any jurisdictional error. The Petitioners have failed to make out any case for interference in exercise of the jurisdiction under Article 226 and/or 227 of the Constitution of India. The petition therefore fails and deserves to be rejected. Accordingly petition is hereby rejected. No costs.