

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2122 OF 2014
WITH
CIVIL APPLICATION NO.2123 OF 2014
WITH
CIVIL APPLICATION NO.2124 OF 2014
IN
WRIT PETITION NO. 5472 OF 2001
Dada Maruti Bodhe (since deceased)
through Lrs. Subhadra D. Bodhe & ors. .. Applicants
vs.
Awadabai Raghunath Gharge (since deceased)
through Lrs. Shalan S. Deshmukh & ors. .. Respondents

Mr. Vijay Patil for the Applicants/org. Petitioners.
Mr. Dilip Bodake for Respondent No.1C.

CORAM : M. S. SONAK, J.
DATE : 21 JANUARY, 2015.

P.C. :-

1] Learned counsel for the applicants in all these applications seeks leave to delete respondent No.2A as well as respondent No.3 in all these civil applications. Learned counsel points out that respondent No.3 was already deleted from the array of parties in the main petition earlier. Hence, inclusion of such names in the civil applications is a mistake. In such circumstances, deletion is permitted.

2] By these civil applications, the applicants seek restoration, setting aside the abatement and condonation of delay in applying for restoration and setting aside of abatement.

3] In the applications, the applicants have set out the reasons which prevented them from seeking relief of restoration, setting aside of abatement and bringing of legal heirs on record within the prescribed period. This basically set out that though the order dismissing this petition was made on 27 July 2011 in presence of learned counsel for respondent No.1, there was some communication gap in the matter of informing the applicants about the same. The circumstance in which the communication gap have also been set out. The applicants have further set out that in the month of August 2014, when the applicants were served with summons in Regular Civil Suit No. 219 of 2014, they became aware of the dismissal of the order. Further there are averements that the applicants were unaware of the demise of respondent No.1 and this also entailed some delay in the matter of taking out some steps.

4] Learned counsel for the applicants submits that they have filed an affidavit of service, which confirms that service of these civil applications has been effected on all the respondents. The same is accepted.

5] Learned counsel for respondent No.1, who has filed the reply opposing these civil applications, points out that once the parties are represented by an advocate, at the stage when the order was

made, then there is constructive notice to the parties. The parties cannot thereafter claim ignorance with regard to the order made. Learned counsel also pointed out that the applicants were very much aware of demise of respondent No.1 and no affidavit in rejoinder has been filed disputing this position.

6] Having heard the learned counsel for the parties and perused the record, I see no reason not to grant the reliefs prayed for in these civil applications.

7] It is true that the applicants were represented by the advocate at the time when the order dated 27 July 2011 was made. However, it has been candidly stated that there was a genuine communication gap in the matter of conveyance of such information to the applicants, who are said to be farmers from Satara. The reasons for delay cannot be said to be either *mala fide* or a part of some dilatory tactics adopted by the applicants. There is accordingly, no reason to disbelieve the statements made in the application seeking condonation of delay and other reliefs.

8] Accordingly, delay in filing the civil applications is condoned. The main petition is restored to the file of this Court. The abatement, if any, is set aside. The applicants are permitted to bring on record

the legal heirs as prayed. Necessary amendment to be carried out within a period of two weeks from today.

9] Considering the inconvenience to respondent No.1C has been put to, although these civil applications are being allowed, it is only proper that the applicants pay costs assessed at Rs.5000/- (Rs. Five Thousand only) to respondent No.1C within a period of two weeks from the date of this order.

10] Notice to respondent Nos.1A, 1B and 1C. In addition to usual mode of service, the applicants are permitted to effect private service upon the said respondents and thereafter to file an affidavit of service to that effect.

11] Mr.Dilip Bodke, learned counsel, who appears for respondent No.1C waives notice for the said respondent in the main petition.

12] Accordingly, Civil Application Nos.2122, 2123 and 2124 of 2014 are disposed of.

(M. S. SONAK, J.)