

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 523 OF 2015

Shri Sopan Baban Dhamankar & Ors. .. Petitioners
vs.
Shri Rajaram Bhagavan Dhamankar & Ors. .. Respondents

Mr. S. G. Kudle for Petitioners.
Mr. S. C. Wakankar for Respondent Nos. 1 to 4.

CORAM : M. S. SONAK, J.
DATE: 16 APRIL 2015

P.C. :-

1] The learned counsel for the petitioners seeks leave to delete the respondent nos. 6 to 23, as according to him, their presence is not necessary for the purposes of the present petition. Accordingly, leave is granted to delete the said respondents as to the risk and consequences of the petitioners. Amendment to be carried out forthwith.

2] Rule. With the consent of and at the request of the learned counsels for the parties, Rule is made returnable forthwith.

3] This petition challenges order dated 14 July 2014 made by the District Judge - 03, Pune, dismissing petitioners applications at Exhibits '12 and '16' in civil miscellaneous application no. 436 of

2008. Exhibit '26' is the application seeking leave to bring on record the legal representatives of deceased respondent nos. 9, 17 and 19. Exhibit '23' is the application seeking condonation of delay in making application at Exhibit '26'.

4] The appeal, in which the civil miscellaneous application no. 436 of 2008 came to be made was instituted some time in the year 2005. The appeal came to be dismissed for non prosecution on 5 April 2008. On 9 June 2008, the petitioners applied for restoration of the appeal.

5] On 18 March 2014, the petitioners filed the applications at Exhibits '23' and '26'. The same have been rejected by the impugned order dated 14 July 2014. Hence, the present petition.

6] Mr. Kudle, the learned counsel for the petitioners submitted that the petitioners had entrusted the entire conduct of the matter to their Advocate Shri Gokhale. However, Shri Gokhale expired and the petitioners were required to engage the services of some other Advocate. In the process, the petitioners being illiterate and ignorant failed to take timely steps for bringing the legal heirs of the deceased respondent nos. 9, 17 and 19 on record. The cause shown for the delay, is neither malafide, nor can it be said that

delay was for the purpose of protraction of the proceedings. In these circumstances, relying upon the decision of the Hon'ble Apex Court in the case of *Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai*¹, Mr. Kudle submitted that the impugned order warrants interference.

7] Mr. S. C. Wakankar, the learned counsel for the respondent nos. 1 to 4 submitted that in the present case the petitioners have made out no sufficient cause for condonation of delay. The application as filed does not specify the extent of the delay, though in some cases the delay may exceed five years. The application also does not indicate as to when the Advocate originally engaged by the petitioners expired and the manner in which such demise attributed to the delay. In so far as respondent no. 19 is concerned, the learned counsel pointed out that the said respondent expired on 27 February 2006 i.e. even prior to the dismissal of the appeal for default. In such circumstances, the learned counsel submitted that there is no warrant to interfere with the impugned order.

8] Having heard the learned counsels for the parties and perused the record, although, it is true that the petitioners have been negligent and to a certain extent casual in the matter, nevertheless, interests of justice would be met if exemplary costs

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are imposed upon the petitioners as a pre-condition for condoning the delay in bringing the heirs of some of the deceased respondents on record.

9] The records would indicate that the respondent no. 9 expired on 30 August 2008. The respondent no. 7 expired on 2 July 2009 and the respondent no. 19 had expired on 27 February 2006. The explanation in the application seeking condonation of delay is that Mr. Gokhale, Advocate engaged by the petitioners expired. The said Advocate, was conducting the appeal and matters connected therewith. The petitioners, thereafter had to engage services of a new Advocate. The petitioners, being ignorant of legal proceedings, did not know that heirs had to be brought on record within a period of ninety days from the date of demise. Further, it was realised that there is some lapse in the matter of bringing heirs on record, the necessary applications made to be filed seeking condonation of delay and permission to bring heirs on record.

10] In the matters of condonation of delay, there is bound to be some lapse on the part of the parties or their Advocates. Further, that by itself, is not sufficient to shut out hearing on merits. In this case, although delay is substantial, it cannot be said that the cause shown is either malafide or that the delay was for the purposes of

protracting the proceedings. The length of delay, is not the only relevant factor. In fact the quality of explanation offered is the most relevant factor. In the present case, although it is true that the petitioners have been somewhat casual in the matter, it cannot be said that the cause shown is either malafide or no cause at all.

11] No doubt, granting applications under Exhibits '23' and '26' at this stage, bound to occasion prejudice to the respondent nos. 1 to 4. However, the prejudice is not of such degree as should warrant the dis-allowance of the said two applications. The prejudice is of such nature, as can be compensated by way of costs. Considering the magnitude of the matter as well as the circumstances, in which the same has been occasioned, it would be just and proper if the impugned orders are set aside subject to the petitioners paying costs of Rs.30,000/- (Rupees Thirty Thousand) in favour of the respondent nos. 1 to 4.

12] Accordingly, the impugned order dated 14 July 2014 is set aside. Applications Exhibits '23' and '26' are hereby allowed. All this is subject to the petitioners depositing in the Court of District Judge – 3 Pune, within a period of four weeks from today costs of Rs.30,000/- (Rupees Thirty Thousand). In case the costs are deposited within the said period, the District Judge -3, Pune, to

proceed further in the matter. The costs so deposited may be withdrawn by the respondent nos.1 to 4 unconditionally. In case the costs are not deposited within a period of four weeks from today, then this petition shall be deemed to have been dismissed without any further reference to this Court.

13] Further, considering that the restoration application i.e. C.M.A. No. 436 of 2008 came to be filed on 9 June 2008, the District Judge is directed to dispose of the same as expeditiously as possible and in any case within a period of six weeks from the date the petitioners deposit the costs.

14] Parties to appear before the learned District Judge on 29 April 2015 at 11.a.m. and produce an authenticated copy of this order.

15] Rule is accordingly made absolute. There shall be no separate order as to costs in this petition.

16] All parties to act on basis of an authenticated copy of this order.

(M. S. SONAK, J.)