

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (CAF) NOS. 334 & 335 OF 2015
IN
FIRST APPEAL NO. 289 OF 1999

Bakshiram Gurumukhrai Hindu Joint Family Firm Vs. State of Maharashtra & Ors.

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Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri A. S. Agrawal Adv for appellant.
Shri M. Ekaray AGP for respondents 1 & 2.
Shri V. k. Paliwal Adv for respondent 3.

CORAM: A.S.CHANDURKAR J.

DATED: 5th OCTOBER, 2015.

The present applications have been moved seeking permission to substitute the name of Karta of the joint Hindu family as appellant along with prayer for condoning the delay and setting aside abatement. In the applications it is stated that the proceedings for acquisition commenced in the year 1969 and during pendency of the proceedings the joint Hindu family was represented by various persons shown as Kartas at the relevant time. It is stated that one Vishwanath Jajodia had executed power of attorney in favour of three persons when the first appeal was filed. Shivprasad Jajodia who was one of them was looking after the proceedings in his capacity as power of attorney holder. Vishwanath Jajodia expired on 07.05.2001. There was however no contact or communication with persons connected with the Joint Hindu family thereafter. In the year 2009 the Paper Book was filed and

subsequently the counsel representing the applicant also expired. A notice was issued for engaging another counsel by this Court. The present applicant thereafter obtained necessary information and thereafter filed the present applications. It is therefore submitted that necessary permission be granted by condoning the delay and setting aside abatement.

Reply has been filed on behalf of respondent no.3 to both the applications. It is submitted that applicant has no locus to prosecute the proceedings. In absence of legal right being brought on record the applications were not tenable. The learned counsel placed reliance upon the judgments in *G. Govindraju Mudaliar Vs. Vinayak Mudaliar and others AIR 1963 Madras 310* and *Chandradip Prosad Vs. Jagannath Agarwalla AIR 1978 Calcutta 157*. As delay caused had not been properly explained it was submitted that the proceedings have abated.

I have heard the respective counsel for the parties and I have duly considered their respective submissions. Perusal of the record indicates that proceedings for acquisition initially commenced in the year 1969. Thereafter, notification under Section 4 of the said Act was again issued on 05/05/1977. W.P.No.3178/1980 had been filed by the then Karta, Gajadharprasad challenging the acquisition proceedings which came to be dismissed. The record indicates that thereafter first appeal was filed through one Vishwanath as manager of the Joint Hindu Family. He expired during pendency of the present proceedings on 07.05.2001. It is to be noted that the present appeal was admitted on 13.10.1999. Record further indicates that Paper Book was filed in the year 2009. Notice can be taken of the fact that once an appeal is

admitted there is no requirement of the appellant remaining present before the Court and it is only when the appeal is taken up for hearing that an attempt is made to contact the appellant. Considering the fact that notice for engagement of another counsel was issued on 26.09.2014 and said notice was sought to be served through the Civil Court at Bilaspur, the averments made in para 9 of the application can be treated as acceptable.

In so far as the stand of the non applicant no.3 that necessary details of the members of joint family are not mentioned same cannot be a ground to refuse leave to the applicant to prosecute present proceedings. Same is a matter for joint family to take into consideration. Averments in paragraph 3 of C.A. No.334/2015 to the effect that the present applicant is the Karta of the joint family are sufficient to maintain the present application. The decision in *G. Govindraju Mudaliar and Chandradip Prosad* (supra) thus do not apply in these facts. Hence treating the averments made in the applications as acceptable the same are allowed. Applicant is permitted to prosecute -present proceedings and after setting aside the abatement and condoning the delay the applicant is permitted to be brought on record. Necessary amendment be carried out by counsel for the applicant. Applications are disposed of accordingly.

JUDGE

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