

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.38 OF 2016

1. Rajshekhar Bhagwat Chaudhari,
Age:64 years, Occu.:Business,
R/o. 270, Navi Peth, Khiroda Bhawan,
Jalgaon, Tq.& Dist. Jalgaon,
2. Sunil Bhagwat Chaudhari,
Age:54 years, Occu.:Business,
R/o.270, Navi Peth, Khiroda Bhawan,
Jalgaon, Tq. & Dist. Jalgaon.

...APPELLANTS
(Orig.Applicants/Deft.
Nos.2 & 3)

VERSUS

1. Smt. Pramila Pralhad Chaudhari,
Deceased
2. Kalpana Pralhad Chaudhari,
Age:44 years, Occu.:Household,
R/o. Khiroda, Taluka-Raver,
Dist. Jalgaon,
3. Nitin Pralhad Chaudhari,
Age:46 years, Occu.:Agriculture,
R/o. Khiroda, Taluka-Raver,
Dist. Jalgaon,
4. Jayshree Girdhar Patil,
Age:51 years, Occu.: Household,
R/o. 12, Subhashwadi, Ringroad,
Jalgaon, Taluka & District Jalgaon,
5. Aruna Krushna Patil,
Age:47 years, Occu.:Household,
R/o.C/o. Dr. K.D. Patil,
Shahunagar, Jalgaon,
Taluka & District Jalgaon,

6. Sanjay Pralhad Chaudhari,
Age:49 years, Occu.: Medical
Practitioner,
R/o. 6, Ganesh Colony, Jalgaon,
Taluka & District Jalgaon.

...RESPONDENTS
(Orig. Respondents/ Orig.
Plaintiffs)

...

Mr. G.S. Rane, Advocate for Appellants.

Mr. G.V. Wani, Advocate for Resp.Nos.2 to 6.

CORAM : P.R.BORA, J.

DATE : 13th October, 2016.

ORAL JUDGMENT:

1) Heard. Admit. By consent of the learned Counsel appearing for the parties, taken up for final disposal.

2) The appellants have filed the present appeal challenging the order passed by Principal District Judge, Jalgaon in Civil Misc. Application No.40/2015 on 6th April, 2016. The aforesaid application was filed by the appellants, seeking restoration of Regular Civil

Appeal No. 296/2006, which was dismissed for want of prosecution, vide order passed on 13th February, 2015.

3) Shri Rane, learned Counsel appearing for the appellants submitted that in Regular Civil Appeal No. 296/2006, an application was preferred by the appellants, seeking permission to lead the additional evidence. The learned counsel further submitted that since the said application was rejected by learned District Judge, the appellants have preferred Writ Petition No. 9719/2014 before this Court, challenging the said order. The learned counsel further submitted that the appellants had been, therefore, requesting the learned Principal District Judge to adjourn the hearing of the Regular civil Appeal till decision of the aforesaid writ petition. The learned Counsel submitted that though in the writ petition filed by the appellants, no express stay was granted by this Court to the proceedings before the court below, in the order passed by

this Court (Coram: Ravindra V.Ghuge,J.) on 18.11.2014, liberty was granted to the present appellants to request the first appellate court to adjourn the proceedings till the next date of hearing in the writ petition. The learned Counsel further submitted that for certain genuine reasons, the respondents in the writ petition could not be served within time and consequently, the writ petition could not be heard by this Court. The learned Counsel submitted that though all these facts were brought to the notice of the court below, the same were not properly considered by it and vide order passed on 13.2.2015, the appeal filed by the appellants was dismissed for want of prosecution.

. The learned counsel submitted that in the Misc. Civil Application also all the aforesaid facts were brought to the notice of the court and a request was made for setting aside the order, whereby the appeal was dismissed for want of prosecution. The learned Principal

District Judge, however without considering the merit in the submissions made on behalf of the appellants, rejected the said application also. The learned Counsel in the aforesaid circumstances prayed for setting aside the impugned orders and consequently prayed for restoration of Regular Civil Appeal No.296/2006 pending on the file of the Principal District Judge.

4) Shri Wani, learned Counsel appearing for the respondents, resisted the submissions made on behalf of the appellants. The learned Counsel submitted that the Court below has rightly rejected the application seeking restoration of the appeal and no interference is required in the impugned orders.

. The learned Counsel further submitted that the Regular Civil Appeal filed by the present appellants has also been rightly dismissed by the learned Principal District Judge, vide order passed on 13th February, 2015,

observing that despite ample opportunities given to the appellants, they did not proceed with hearing of the appeal. The learned Counsel, therefore, prayed for dismissal of the present appeal.

5) I have carefully considered the submissions made on behalf of the learned Counsel appearing for the parties. I have also perused the impugned orders. It is true that mere pendency of the writ petition before the High Court could not have been a ground for not proceeding with the appeal before the court below when no stay is granted by the High Court in the writ petition. The impugned orders further reveal that reasonable opportunities were granted by the first appellate court to the appellants on the ground that the writ petition filed by them is pending before the High Court. Considered the matter on such facts there seems no case for the appellants. However, the fact remains that ultimately, the Regular Civil Appeal is dismissed

by the court below for want of prosecution. In other words, the Regular Civil Appeal has not been decided on merits. It appears to me that the appellants need to be given an opportunity to contest the appeal filed by them on merits. Of course, they cannot be permitted to henceforth seek any adjournment before the court below on the ground that the writ petition is pending before the High court.

6) In the result, the following order,

ORDER

- i) The impugned order dated 6th April, 2016 is quashed and set aside and the Civil Misc. Application No.40/2015 is allowed. Consequently, Regular Civil Appeal No. 296/2006 stands restored to its original file;
- ii) The appellants shall proceed with the appeal without asking for any adjournment, more particularly, on the ground that Writ Petition No.9719/2014 filed by them is pending before the High court;

- iii) Parties shall appear before the first appellate court on 15th November, 2016;
- iv) The first appellate court shall decide the Regular Civil Appeal on its own merits;
- v) The Appeal from Order stands disposed of in the aforesaid terms. Pending civil application, if any, stands disposed of.

(P . R . BORA)
JUDGE

bdv/