

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Application [CAO] No. 101 of 2016
IN
Misc. Civil Application No. 112 of 2012
IN
Second Appeal No. 450 of 2010 [dismissed]
[Ushabai Narayanrao Rudrakar, since dead, through her legal heirs
& others Vs. Shewantabai Ganpatrao Wankar, since dead, through
her legal representatives & others]

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

Court's or Judge's orders

Mr. R. Ghuge, Adv., for the Appellants.
Mr. P.S. Tiwari, Adv., for legal heirs of respondent Nos. 1 (a) and 1 (b).

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CORAM : A.B. CHAUDHARI, J.

DATE : 08th February, 2016

Learned counsel for the appellants states that it is necessary to have some of the addresses of the respondents corrected which he has incorporated in the Misc. Civil Application.

Leave is granted to do so.

Misc. Civil Appln. No. 112 of 2012 :

Heard learned counsel for the rival parties present.

It is seen from the record that this appeal was dismissed in default. Thereafter, applications for restoration, condonation of delay and grant of stay all were filed by the appellants through their Advocate. Learned counsel for the appellants states that in the Second Appeal itself, the respondent nos. 2,3,12,13,14 and 15 were not served though notices were issued to them on the Second Appeal. It is seen from the record that these applications for restoration, condonation of delay and stay have been pending since April, 2012 for one or the other reason. One of the respondents, i.e., respondent no.14 in the Second Appeal, has an address of California [USA]. Learned counsel for the appellants states that he tried on two occasions, as per the office instructions, to serve her by Registered Post Acknowledgement Due; but it has proved to be unsuccessful and even the report is still awaited. It, thus, appears that the main appeal itself is not heard thereafter due to these events. There are as many as sixteen respondents.

Looking at the state of affairs that from 2012, the matter is being dragged for service and so on and so forth, I think, it is better to hear the Second Appeal itself, because this Court admitted it for final hearing and, therefore, the same should be heard. Though the learned counsel for the concerned respondents has

objection for condonation of delay and restoration of appeal, which was dismissed in default, I think it is of no use if the appeal is buried without deciding the same on merits even if the learned counsel for the respondents has objection. I, therefore, condone the delay and restore the Second Appeal to the file.

The next question is about the service on all the respondents in the Second Appeal. Learned counsel for the parties before me state that except for respondent nos. 2,3,12,13,14 and 15, others were served after admission of the appeal. Technically, even then, it is necessary to serve them because of the restoration of the Second Appeal. But then, this cannot be allowed to drag on, as the Second Appeal, which is of the year 2012, would continue to be lying in the cupboards with several objections and without service.

In view of restoration of the Second Appeal, now, since both the parties have agreed to go for final hearing of the appeal itself, this Court orders issuance of notice to all the respondents in the Second Appeal, returnable in three weeks, by Registered Post Acknowledgement Due, in addition through the court service. In so far as respondent no.14 is concerned, service on her be effected by a courier as she resides in California [USA]. Hamdast for service through Court for those residing in India is allowed. The appellants shall take steps to collect the Hamdast writ and arrange to take it to the concerned Civil Judge and also get the report from the

Civil Judge by Hamdast. In so far as respondent no.14 is concerned, the same may be done by a courier service and accordingly an affidavit of service be placed on record.

In addition to above, the appellants are permitted to serve by newspaper publication at Pune and also to submit the newspaper report in this Court.

Learned Adv. Mr. Tiwari waives service for respondent nos. 1 (a) and 1 (b) in the Second Appeal.

Judge

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