

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

WRIT PETITION NO. 1907/2016

(Shri Madhukar Narayan Patil and 15 others vs. Smt. Devkabai Baburao Junare
and 7 others)

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

Court's or Judge's order

.....
Mr. Khapre, Advocate for petitioners
Mr. A.J. Thakkar, Advocate for respondents

CORAM : A.S.CHANDURKAR, J.
DATED : 25th October, 2016.

Heard.

Challenge in the present Writ Petition is to the order passed below Exhs. 18 and 19 whereby the Appellate Court has allowed both the Applications and after setting aside the abatement, has permitted the legal heirs of appellant no.1 before the Appellate Court, to be brought on record.

The petitioners are the respondents in Regular Civil Appeal No. 92/2012. During pendency of the Appeal, the appellant no.1 therein expired on 24.1.2012. An Application below Exh. 18 for setting aside the abatement and an Application below Exh. 19 for bringing on record the legal heirs of said appellant no.1, came to be filed on 11.10.2012. By the impugned order, the Appellate Court allowed both the Applications.

Shri Khapre, the learned counsel for the petitioners submitted that in absence of any prayer for condoning the delay in setting aside the abatement and for bringing on record the legal representatives, both the Applications could not have been allowed. According to him, the prayer for setting aside the abatement was not sufficient and it was necessary for the

legal heirs to have sought condonation of delay. It is, therefore, submitted that the Appellate Court acted without jurisdiction in allowing the said Applications.

Shri Thakkar, the learned counsel for the respondent supported the impugned orders. According to him, the reasons for delay were mentioned in the Application below Exh. 18 and hence the Appellate Court was justified in allowing both the Applications.

Perusal of the Application below Exh. 18 indicates that the applicants have stated therein that after the transfer of the Appeal from Buldana to Malkapur, the records were not immediately traceable. As the necessary documents along with the death certificate were not received immediately, the Application in question could not be moved. It was then stated that in that process, the proceedings had abated and hence the abatement ought to be set aside. The petitioners herein did not contest the said Application. The Appellate Court, therefore, proceeded to allow the said application on being satisfied about the contents of the same. Moreover, the record indicates that some of the legal heirs of appellant no. 1- Baburao were already on record before the Appellate Court. It would therefore not result in abatement of the entire proceedings.

Considering the fact that the Appellate Court has exercised the discretion while allowing both the Applications, I do not find that the challenge made to said orders can succeed. The averments in the Application below Exh.18 indicate reasons for delay. Hence, no case has been made out to interfere in the writ jurisdiction of this Court. The Writ Petition is, therefore, dismissed with no order as to costs.

JUDGE

salate