

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

WRIT PETITION NO. 3824 OF 2016

Syed Abdul Wahab s/o Syed Abdullah,
age 72 years, occ. Business,
R/o 6-1-57, Flat No. 1101 and 1102,
Mount Nasir Saifabad, Hyderabad,
Telangana State

...Petitioner
Orig.Defendant

VERSUS

- 1] State of Maharashtra,
- 2] Humayun Begum w/o Agha Syed Shustari,
age 70 years, occ. Household,
R/o Putli Burj Police Colony,
Hyderabad, Telangana State,
through GPA
Syed Rahat Hussain Razvi,
@ Alamdar Syed Zaker Hussain Razvi,
age 56 years, occ. Business household,
R/o H.No. 4.11-14/Dkhyam Nagar,
Diay, Hyderabad, Telangana State

...Respondents
Orig.Applicant

...
Advocate for Petitioner : Hiwrekar S.D.
...

CORAM : N.W.SAMBRE, J.

DATED : 16th November, 2017

PER COURT : -

Heard learned counsel for petitioner-objector in
M.A.R.J.I. No. 842 of 2002 seeking succession.

2. Since, the present respondent failed to attend the said proceedings, the learned Civil Judge, Senior Division, Aurangabad dismissed the said proceedings by order dated 5.9.2012.

3. Respondent no.2-original applicant moved an application for restoration of the said proceedings, which was time barred. Said proceedings were registered as M.A.R.J.I. No. 238 of 2015 for restoration of M.A.R.J.I. No. 69 of 2015 by condoning delay. Both these applications are allowed vide orders dated 18.8.2015 and 2.3.2015. As such, this petition by the objector.

4. Shri Hiwrekar, learned counsel for the petitioner would urge that the original proceedings were dismissed for want of prosecution in view of objection raised by the present petitioner, and as such, while ordering condonation of delay and restoration the course which should have been adopted by the Court between was to allow notice of hearing. According to him, the Court failed in appreciating the fact that petitioner has prosecuted the proceedings from 2002 to 2012. Least that was expected of was to put him on notice before passing impugned order. According to him, both the orders impugned have adverse consequence over his right and, as such, same are not sustainable. On merits, he would urge that delay of about 3 years should not have been condoned merely for asking without putting Respondent No.2 to conditions.

5. Per contra, learned counsel for the respondent No.1-original applicant, by inviting attention of this Court to the judgment of the Apex Court in the case of **Aligarh Muslim University and others vs Mansoor Ali Khan**, reported in **AIR 2000 SC 2783** and **Nirma Industries Limited and Another vs Securities and Exchange Board of India**, reported in **AIR 2013 SC 2360** would urge that notice to the present petitioner is not required, as by virtue of the orders impugned no prejudice or adverse consequence to the petitioner are demonstrated. According to him, at the most, this respondent could have been put to condition of payment of costs, and sought dismissal of the petition.

6. I have considered the rival submissions.

7. It is not in dispute that the petitioner is objector to original M.A.R.J.I. No. 842 of 2002, which was dismissed for want of prosecution on 5.9.2012. Though the said proceedings have reached the stage of recording of evidence, still, the fact remains that rights of the parties are not adjudicated in the said proceedings on merits. The objection of the petitioner was to the claim raised in main petition in which no order was passed adverse to the interest of the petitioner.

8. So far as the orders impugned are concerned, what is ordered by the learned Court is condonation of delay and restoration of original M.A.R.J.I. No. 842 of 2002. It is difficult to gather from the record, that the orders impugned have caused

any substantial prejudice to the respondent or have any adverse consequence over his right. It is also required to be observed here that after restoration of the proceedings the petitioner is already put to notice and he would be permitted to prosecute his objection on merit.

9. In the wake of above, I hardly notice any reason for ordering interference by exercising extra ordinary jurisdiction. However, in the facts and circumstances of the case, it would be appropriate that delay condoned by the Court below should have been subjected to certain condition.

10. In my opinion, the reasonable condition should be directing the present respondent to deposit costs of Rs.3,500/- in this Court, within a period of four weeks from today, to which the petitioner will be entitled. If the costs are not deposited, M.A.R.J.I. No. 842 of 2002 be treated as dismissed for non-compliance of the order.

[N.W.SAMBRE, J.]

dbm