

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1778 OF 2017

1) Jagannath Namdeo Jare (Died Thr. L.Rs)

1-A) Kusum Sambhaji Zarekar
Age – 60 years, Occu- HousehjoId
R/o Ghospuri tq. & Dist – Ahmednagar

1-B) Radhakishan Jagannath Jare
Age – 58 years, Occu- Agri
R/o Hingangaon Tq. & Dist – Ahmednagar

Through their G.P.A. Holder i.e. petitioner No. 2-C

2) Pandurang namdeo Jare
(Died Thr. L.Rs.)

2-A) Smt. Gangubai Pandurang Jare
Age – 58 years, Occu- Agri
R/o. Hingangaon Tq. & Dist- Ahmednagar

2-B) Hirabai w/o Gajaram Dani
Age – 58 years, Occu- Agri
R/o Shendi Tq. & Dist- Ahmednagar

2-C) Ashabai Sainath Dhonde
Age – 48 years, Occu- Labour
R/o Raosaheb Khandagale Chal, Nalegaon
Ahmednagr Tq. & Dist- Ahmednagar

.....Petitioners

Versus

Khandu Namdeo Jare (Died Thr. L.Rs.)

1) Bhausahab s/o Khandu Jare
Age - 41 years, Occu- Agri

2) Raosaheb s/o Khandu Jare
Age – 38 years, Occu- Agri

3) Kondji s/o Khandu Jare
Age- 37 years, Occu- Agri

4) Kaushallya Khandu Jare
Age- 64 years, Occu- Agri

5) Ratnabai Khandu Jare
Age – 67 years, Occu- Agri

All R/o Hingangaon Tq. & Dist- Ahmednagar

6) Sulochana Sanjay Bhapkar
Age – 43 years, Occu- Agri
R/o Gundegaon Tq. & Dist- Ahmednagar

...Respondents

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Mr. Amol S. Gandhi Advocate for petitioners
Mr. Y. V. Kakade, Advocate for respondent no. 2

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[CORAM: SUNIL P. DESHMUKH, J.]

Date: 10th July, 2017

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. Writ petition has been moved against order dated 20th October, 2016 passed by District Judge-6, Ahmednagar in miscellaneous civil application no. 78 of 2013. Said application, is rejected by District Judge-6 was filed by present petitioner for condonation of delay caused in filing

application for setting aside abatement.

3. It emerges that regular civil suit no. 1119 of 1987 against predecessor of present petitioners had been instituted for partition and separate possession by respondents and the same was decreed by judgment and order dated 26th April, 1995. Against aforesaid judgment and decree, petitioners i.e. Jagannath and Pandurang defendants no. 1 and 2 had preferred regular civil appeal no. 311 of 1995 in district court, Ahmednagar. During pendency of said appeal, original plaintiff-Khandu died on 19th October, 1998. Around December, 2000, legal heirs of Khandu filed application exhibit-22 informing thereunder death of Khandu. It appears that application exhibits-23 and 24 had been moved on behalf of appellants requesting to grant time to bring legal heirs of deceased Khandu on record. However, till April, 2001 no progress had been made and court had passed order on 6th April, 2001 declaring appeal as abated.

4. Learned counsel for petitioners submits that after death of Khandu his legal heirs approached the petitioners and conveyed their intention to settle the matter as per mutation entry no. 436 and in the circumstances petitioners

should not pursue the matter further as nothing would be done. They had not realised that around 2009, execution petition came to be filed by legal heirs of decree holder. However, a notice came to be issued from the revenue authority for partition pursuant to the decree and thereupon miscellaneous civil application no. 78 of 2013 came to be filed for condonation of delay caused in filing application for setting aside abatement order.

5. Learned counsel Mr. Gandhi submits that petitioner's father is illiterate person and education level of the petitioner is not so high. In the circumstances, petitioners believed false impression given by the respondents and they did not prosecute the appeal. He goes on to submit that appeal is a substantive right, and matter concerns immovable property. He submits that appeal deserves to be revived for consideration on merits, lest the substantive right pursuant to law would be lost. He therefore, urges to allow the writ petition and submits that inconvenience caused to the other side can be made good by imposing costs.

6. On the other hand, learned counsel Mr. Kakade appearing for the respondents submits that the reasons put

forth by the petitioners seeking condonation of delay absolutely did not carry any substance even by semblance. He submits neither any understanding as alleged had ever been given about intention nor the respondents had even whispered or suggested of giving up right to property under the decree passed in regular civil suit no. 1119 of 1987.

7. He submits that applicants had filed Applications exhibit-23 and 24 seeking time to bring legal heirs of deceased plaintiff - Khandu on record, however, till 6th April, 2001, no movement had been made to bring legal heirs of Khandu on record. He submits that no understanding had been given about intention to settle the matter. Having regard to that decree was not being acted upon, the same compelled respondents to move the court by filing execution petition. Accordingly, notices were issued and served upon judgment debtor/legal heirs, yet, no response had been given by the petitioners. As a matter of fact, thereafter, court passed order pursuant to section 54 of Code of Civil Procedure and even then no movement had been made until notice had been issued for delivery of possession.

8. Over and above that Mr. Kakade points out that one proceeding bearing regular civil suit no. 220 of 2013 came to be instituted by the petitioners seeking declaration that decree passed in regular civil suit no. 1119 of 1987 to be null and void.

9. After having heard learned counsel, while the court was considering the application for condonation of delay, it observed that no sufficient and satisfactory reasons are given for condonation of delay. In the present matter application has been moved for setting aside abatement about twelve years after abatement order had been passed in the year 2001.

10. It appears that miscellaneous civil application had been moved only on 6th April, 2013. There is no material placed showing there had been any understanding given by respondents to petitioners. The court has adverted to that, there is no plausible explanation given for the delay condonation. Even after notice has been given of execution or even after the decree had been referred for execution under section 54 of Code of Civil Procedure by the court, no explanation is given.

11. In the circumstances, looking at the order and the reasons appearing while rejecting miscellaneous civil application no. 78 of 2013 under the paragraphs no.7 to 14, it does not appear that the appellate court has committed any error in not exercising discretion in favour of petitioners.

12. The applicants have failed to put forth sufficient causes for condonation of delay. The impugned order, as such, does not call for interference.

13. Writ petition, therefore, stands dismissed.

14. Rule discharged.

[SUNIL P. DESHMUKH, J.]

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