

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11733 OF 2015

Tatya Raghu Mulik
(since deceased) through his L.R.
A-Kisan T. Mulik & Others .. Petitioners.

v/s.

Ramchandra R. Mulik .. Respondent.

Mr. Manmath S. Athalye, for the Petitioners.

CORAM: M.S.SANKLECHA, J.
DATE : 7th AUGUST, 2017.

P.C:-

None appears for the Respondent in spite of service. As directed by this Court by order dated 2nd February, 2017, notice was issued by Registry, which indicates that it is likely that the Petition would be disposed of finally at the stage of admission. In spite of above notice, none appears for the Respondent.

2 This Petition under Article 227 of the Constitution of India, challenges the order dated 12th June, 2014 passed by the District Judge-3, Satara. The impugned order dated 12th June, 2014, rejected the Petitioner's application for bringing the legal heirs on record being Exh. 29 and 30 filed before the Appellate Court. Consequently, the Civil Appeal No. 157 of 2001 also stands disposed of, as having abated.

3 Briefly, the facts leading to this Petition, are as under:-

- (a) The Respondent herein filed a Suit against Petitioner's father in respect of property (suit property) being RCS No. 29 of 1994. The same was decided against the Petitioner's father. Thus, Petitioner's father filed an appeal to the District Judge, Satara being RCA No. 157 of 2001. This appeal was filed on 25th February, 2001. The Petitioner's father died on 7th September, 2001. The Petitioner was not aware of the above pending legal proceedings of his father.
- (b) It was only when the Petitioner went to the office of the Land Acquisition Officer on 17th January, 2008 on receipt of notice of acquisition of part of the suit property that the Petitioner learnt about the pending legal proceedings. This on account of the fact that the Respondent had informed the Special Land Acquisition Officer not to pay the amount of compensation to the Applicant in view of the pending appeal.
- (c) On enquiry, Petitioner learnt that the Advocate representing his father in pending RCA No.157 of 2001 had passed away. Consequently, on further enquiry, the Petitioner learnt that appeal had been dismissed on 20th January, 2008 on account of having abated. Thereafter, the Petitioner filed an application for restoration of the Appeal. This application for restoration of appeal being Miscellaneous Civil Application No.65 of 2010 was allowed by an order dated 18th October, 2012 and the Appeal was restored with a specific condition that the costs of Rs.5,000/- should be deposited on or before 30th November, 2012, failing which, application shall stands rejected. The Petitioner deposited the

said amount on 10th December, 2012 in the Court and the same was accepted.

- (d) Thereafter, the Petitioner made applications being Exh. 29 and 31 before the District Judge, Satara, seeking condonation of delay for bringing legal heirs on record. The impugned order rejected the Petitioner's application for setting aside the abatement and bringing legal heirs on record on the ground that no appeal was pending before it as the Petitioner had not deposited the amount of Rs.5,000/- on or before stipulated date i.e. 30th November, 2012.
- (e) In the above view, Petitioner's application for bringing legal heirs on record along with its application for condonation of delay for the same was not considered.

4 From the aforesaid facts, it is clear that the Appeal bearing No. RCA 157 of 2001 itself had been restored by an order dated 18th October, 2012 with a direction to deposit the costs of Rs.5,000/- on or before 30th November, 2012. The Petitioner has deposited amount on 10th December, 2012. Appeal continued to be on the file of the District Judge, Satara when the Petitioner made an application being Exh. 29 and 31 for setting aside the abatement of the Appeal and bringing the legal heirs of the deceased father of the Petitioner on record. The fact that the costs of Rs.5,000/- has been paid by the Petitioner and accepted by the Court, is un-disputed. This itself would imply that the delay of 11 days in depositing the amount had been condoned. This is particularly, so as the Court was satisfied with the reasons for the condonation of delay in restoring the appeal.

5 Therefore, on above peculiar facts, the learned District Judge, Satara ought to have condoned the delay and considered the application being Exh. 29 and 31 for setting aside the abatement and bringing legal heir/ representative on record, on its own merits.

6 In the above view, the impugned order dated 12th June, 2014 is hereby quashed and set aside. The application being Exh. 29 and 31 before the learned District Judge, Satara in the pending appeal being RCA No.157 of 2001 is restored for fresh consideration on its own merits.

7 **Petition is allowed** in the above terms. No order as to costs.

(M.S.SANKLECHA,J.)