

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

CIVIL APPLICATION (CAO) NOS. 987/2017, 988/2017, 898/2017 & 990/2017

IN

MISC. CIVIL APPLICATION ST. NO.380 OF 2017

IN

SECOND APPEAL NO. 159 OF 2010

(RAJKUMAR CHAMPALAL GUJRATHI THR. LRS....VS.. SMT. CHAMELIBAI CHHAGALAL SHRIMALI &
OTH.)

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

Court's or Judge's orders

Shri J.B.Gandhi, Advocate for Applicants.

CORAM : Z.A.HAQ, J.

DATED : AUGUST 01, 2017.

CIVIL APPLN.(CAO) NOS.988/17, 989/17 & 990/17.

For the reasons stated in the applications and as Shri J.B. Gandhi, Advocate appears for the legal representatives of the appellant No.1, the legal representatives of the appellant No.1 are permitted to prosecute the matter.

The applications praying for setting aside abatement, condonation of delay in filing application for bringing LR's on record and seeking permission to bring LR's of the appellant No.1 on record, are **allowed** accordingly.

CIVIL APPLN.(CAO) NO.987/2017.

Heard.

The applicant Nos. 1(a) to 1(d)-legal representatives of the appellant No.1 Rajkumar Champalal Gujrathi and applicant Nos. 2(a) to 2(c)-original appellant No.2 (a) to 2(c) seek review of the judgment passed by this Court in Second Appeal No. 159 of 2010 on 23rd September, 2014. As there is delay of about 807 days in filing the review application, this application praying for condonation of delay is filed.

According to the applicants, original appellant No.1 Rajkumar Champalal Gujrathi was looking after the legal proceedings i.e. Second Appeal No. 159 of 2010 and the applicant Nos. 1(a) to 1(d) were not aware that the second appeal is decided. It is stated that the applicant Nos. 1(a) to 1(d) got knowledge that the second appeal is decided by this Court on 23rd September, 2014 when they received notice of R.D. No.1 of 2015. It is submitted that after getting knowledge that Second Appeal is decided the applicant Nos. 1(a) to 1(d) filed their objection in the execution proceedings, took legal advise and then have filed review application.

Though the review application is filed on behalf of the appellant Nos. 2(a)to 2(c) there is no explanation why appellant Nos. 2(a) to 2(c) have not taken steps to file review application within the prescribed limitation. The pleadings of the applicant Nos. 1(a) to 1(d) to justify the delay are also not sufficient inasmuch as the relevant dates and details are not given. The applicant Nos. 1 (a) to 1(d) have not pointed out when the applicants took legal advise and from whom. At the time of hearing the learned advocate for the applicants strongly relied on the proposition laid down in the judgment given in the case of *Prakash Vs. Phulavati*, reported in **2015**

ALL SCR 3568 to contend that the civil suit praying for decree for partition and separate possession in respect of the dwelling house at the behest of the original plaintiff was not maintainable. It appears that the appellant Nos. 2 (a) to 2(c) and the legal representatives of the original appellant No.1 are now seeking to rely on the proposition laid down in the judgment given in the case of *Prakash and others Vs. Fulvati* (supra). The second appeal is decided, considering the proposition laid down in the judgment given by the Full Bench of this Court in the case of *Badrinarayan Shankar Bhandari and others Vs. Omprakash Shankar Bhandari*, reported in **2014(5) Mh.L.J. 434**.

Be that as it may, I find that the explanation given in the application does not make out “sufficient cause” on the basis of which inordinate delay of 807 days in filing the review application can be condoned.

Apart from this, I find that there are no bonafides on the part of the applicants in pursuing the matter. The review application and the application praying for condonation of delay have been drafted on 30th August, 2016, which is evident from the date of solemn affirmation/verification supporting the application. The applications are filed on 7th January, 2017. The applications are not circulated for appropriate orders. The applications are listed in normal course. Thus, the facts give reason to believe that these applications are filed only to protract the execution proceedings.

In view of the above, the application is **dismissed**. Consequently the Civil Application (Review) Stamp No. 380 of 2017 is **rejected**.

If the applicants have sought adjournments before the executing Court on the ground that the applications are pending before this Court, the applicants shall pay costs quantified at Rs.Five Thousand per such adjournment. The applicants shall produce copy of this order on the record of the executing Court within fifteen days.

JUDGE

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