

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Application [CAS] Nos.255, 256 & 257 all of 2016

IN
Second Appeal No. 141 of 2003
[Avinash Trimbakrao Ingole Vs. Nathmal Motilal Kasat (since dead)
through his legal heir & others]

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

Court's or Judge's orders

Mr. Ansari, Adv., holding for Mr. H.D. Dangre, Adv., for applicant.
 Mr. B. N. Mohta, Adv., for respondent nos. 2 and 3.

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CORAM : A. S. CHANDURKAR, J.

DATE : 07th June, 2017

By these applications, it is prayed that the abatement of the appeal as against respondent no.5 be set aside and after condoning the delay, his legal heirs be brought on record. It is stated in the application that respondent no.5 expired on 14th February, 2008; but this fact was not informed by the appellant to his counsel. In the application, it is stated that when the appellant attended the office of his counsel on 13th March, 2016, this fact was disclosed, after which the present applications came to be filed. It is, therefore, prayed that the applications be allowed.

The application is opposed by the learned counsel appearing for respondent nos. 2 and 3. In the reply filed on their behalf, it has been stated that the applicant has been negligent in prosecuting the matter

and the delay of about seven years and ten months has not been properly explained. Reliance has been placed on the decisions of this Court in **[1] Rajendra Namdeorao Akre Vs. Rajkumar Bhalerao Balbudhe & another** [2016 (1) Mh.L.J. 184], **[2] Varhyan Narendra Singh (since deceased) through L.Rs. & ors Vs. Kala Narendra Singh & others** [2014 (2) Mh.L.J. 61], and **[2] Parvez Rustom Nekoo Vs. Rustom Ardeshir Nekoo** [2003 (2) Mh.L.J. 236].

The Second Appeal pertains to the year 2003 and after its admission, it was pending for hearing. Though the respondent no.5 expired on 14th February,, 2008, the record indicates that thereafter it was listed before the Court in March, 2014. From the application, it appears that the applicant had contacted his counsel in March, 2016, after which the present applications came to be moved. It is a matter of common knowledge that after an appeal is admitted by the High Court, the parties do not keep regularly in touch with their counsel and it is only when the appeal is to be finally heard that the parties contact their counsel. Considering the fact that the appeal was pending for final hearing since 2003, and the reason mentioned in the application that the applicant-appellant contacted his counsel in March, 2016 appears to be probable, I am inclined to condone the delay, subject to imposition of costs.

In so far as the decisions relied upon by the

learned counsel for the respondent nos. 2 and 3 are concerned, it has been held therein that there should not be any deliberate delay or negligence on the part of the party applying for condonation of delay. Considering the facts stated herein above, I do not find that the delay as caused is deliberate or that it has been caused with mala fide intention.

In view of aforesaid, the applications are allowed, subject to costs of Rs.2,000-00 [rupees two thousand only] to be paid to the respondent nos. 2 and 3 within a period of three weeks from today. Necessary amendment be carried out within a period of one week from today.

The Applications are allowed and disposed of.

Judge

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