

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Application [CAS] No. 596 of 2016
IN
Second Appeal No. 52 of 2011
[Kishor Mangrual Gupta & another Vs. Bhaskar Pandurangji Gade]

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

Court's or Judge's orders

Mr. S. P. Kshirsagar, Adv., for the applicants.
 Mr. Pannase, Adv., for respondent.

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CORAM : A. S. CHANDURKAR, J.

DATE : 18th July, 2017

By this application, it is prayed that the delay in bringing on record the legal heirs of the sole respondent be condoned. In the application, it is stated that after notice was issued to the sole respondent, it transpired through the bailiff report that said respondent had already expired. The present applicants were not aware that the proceedings were disposed of as abated on account of failure to bring on record the legal heirs of the sole respondent. It is further submitted that no intimation in that regard was given under provisions of Order-XXII, Rule 10A of the Civil Procedure Code, 1908. Reliance is placed by the learned counsel on the decisions in **[1] Gangadhar & another Vs. Shri Raj Kumar** [AIR 1983 SC 1202], and **[2] Veena R. Rodkar Vs. Rukmini Vasudeo Narayan & others** [1992 Mh. L.J. 606].

The application is opposed by the legal heirs of the sole respondent. It is submitted that the reason for the cause of delay is not sufficient and considering the long period of delay, the same does not deserve to be condoned.

The record indicates that in the Second Appeal, notice came to be issued on 2nd February, 2011. Pursuant thereto, the sole respondent was sought to be served and it transpired from the bailiff's report that he had already expired on 24th December, 2009. The appeal was, therefore, disposed of as abated. This order was passed by the learned Registrar [Judicial].

It is not in dispute that intimation of death of the sole respondent was not given before the appellate Court. Considering the decisions relied upon by the learned counsel for the applicants, I am satisfied that sufficient cause has been shown for condoning the delay. Accordingly, the application is allowed by condoning the delay.

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Civil Application Nos.597 & 598 both of 2016 :

Considering reasons mentioned in both the applications, they are allowed. Legal heirs of sole respondent are permitted to be brought on record. Amendment be carried out forthwith.

Civil Applications are allowed and disposed of.

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Second Appeal No. 52 of 2011 :

Heard.

Issue notice for final disposal of the appeal on the following substantial question of law:-

The appellant before the appellate Court - Bhaskar Gade having expired on 24th December, 2009 and his legal heirs not being brought on record, whether the judgment of the first appellate Court deciding the appeal thereafter on 30th September, 2010 is a nullity?

Shri Pannase, learned counsel, waives notice on behalf of legal heirs of sole respondent.

Put up on 25th July, 2017.

Judge