

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

SECOND APPEAL NO.490 OF 2011

Natthuji s/o Amrutrao Kamble and ors

..vs..

Manohar s/o Amrutrao Satpudke

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

Court's or Judge's Order

Shri Piyush Kadam, Counsel for the appellant.

Shri A.S. Moon, Counsel for the respondent.

CORAM : V.M. DESHPANDE, J.

DATED : DECEMBER 6, 2017.

Civil Application (CAS) Nos.698, 699, and 700 of 2017

1. Heard learned counsel Shri Piyush Kadam for the applicants/appellants and learned counsel Shri A.S. Moon for the non-applicant/respondent.

2. Civil Application No.698 of 2017 is for condonation of delay in filing an application for bringing legal representatives of deceased respondent on record. Civil Application No.699 of 2017 is for permission to bring legal representatives of the respondent on record. Whereas, Civil Application No.700 of 2017 is for setting aside the abatement.

3. The present appeal is already admitted. During the pendency of the present appeal, respondent Manohar

expired on 20.1.2016. The applications are moved on 11.7.2017.

4. Learned counsel Shri A.S. Moon for the non-applicant/respondent vehemently opposes the applications on the ground that there is a delay of 15 months and 20 days.

5. No doubt, there is a delay. However, it is an admitted position that after the death of respondent Manohar, a Pursis was filed on record on 3.4.2017 intimating about the death of said respondent. Thus, for the first time on 3.4.2017 the appellant got knowledge about the death of respondent Manohar. Thereafter, steps were taken for collecting names of legal representatives and the applications are filed. The said applications are on affidavit.

6. In view of the aforesaid position that factum of death of Manohar was known to the appellant only on 3.4.2017 and the applications are filed on 11.7.2017, in my view, delay, if any, is not an intentional and or *mala fide*.

7. In that view of the matter, all these applications are allowed subject to payment of costs of Rs.1,000/- to the respondent within a period of two weeks from today. Learned counsel Shri A.S. Moon for the non-applicant/respondent shall pass a receipt, acknowledging the receipt of the costs.

8. Delay is condoned. Abatement is set aside. Names of the legal representatives of Manohar be brought on record as respondent No.1A to 1E.

9. Learned counsel for the applicant/appellant to make necessary correction in cause title within a period of two weeks from today.

10. Learned counsel Shri A.S. Moon waives notice on behalf of the newly added respondents on this second appeal on merit.

11. The civil applications are allowed and disposed of accordingly.

JUDGE

!! BRW !!

...../-