

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
CIVIL APPLICATION NO. 15/2016 IN MISC. ST. NO.19822/2015 IN
S.A.NO.248/2012 (D)

Madanlal Dhaniram Prajapati & anr..vs. Marotrao Baburao Tadse (Dead) thr. LRs.

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

Court's or Judge's orders.

Mr. V. S. Giramkar, Advocate for applicants.

Mr. B. N. Mohta, Advocate for non applicant no.1 (b).

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 6, 2017

1. Heard Mr. Giramkar, learned counsel for the applicants and Mr. Mohta, learned counsel for non applicant no.1 (b).

2. This is an application for condonation of delay in filing the application for restoration of Second Appeal No.248/2012. The appeal filed by the applicants was admitted on 07.07.2014. This second appeal was dismissed for want of prosecution on 25.03.2015 for not filing the private paper book.

3. There is a delay of 138 days in moving the application for restoration of the second appeal. According to the learned counsel for the applicant, the delay was caused because the applicants were not knowing that the appeal is dismissed for want of prosecution.

4. I have gone through the contents of the application and also perused the record. The appeal was already admitted for final hearing on the substantial questions of law.

5. Hence, the application is allowed. The delay is condoned. The application stands disposed of accordingly.

Civil Application Nos. 16/2016, 15/2015 & 18/2016

1. Heard Mr. Giramkar, learned counsel for the applicants and Mr. Mohta, learned counsel for non applicant no.1 (B) and proposed LR's in this application. Also perused the reply.

2. Cause for moving this application was order dated 25.03.2015 by which Second Appeal No.248/2012 was dismissed for want of prosecution namely for not filing private paper book on record. Civil Application No. 15/2015 was for condonation of delay in moving the application for restoration. In the said application as well as in the present application it is stated on oath by the applicants that the applicants were not aware about the dismissal of the second appeal in default and they got the knowledge only when an application for bringing legal representative of the original respondent-Marotrao Tadse on record was circulated.

3. The application is vehemently opposed by Mr.Montha, learned counsel for the proposed legal representatives of deceased. The other legal representatives have not filed reply or they are not appearing before this Court in this application.

4. The appeal was dismissed on technical ground for not supplying the private paper book. The appeal was admitted since it involved substantial questions of law. Normally, a second appeal should not be dismissed when it involves substantial questions of law on the ground of non

filing of the private paper book. The appeal is of the year 2012. The appeals of the year 2002 are pending before this Court for final hearing therefore it was impossible for this Court to take up this appeal for final hearing.

5. The delay is approximately of 280 days. Mr. Mohta, submitted that the applicants were having knowledge of the death of the respondent. However, it is not the case of any of the proposed legal representative that the application was not filed with mala fide intention and the other proposed legal representatives are not coming forward. In that view of the matter, all these applications are required to be allowed subject to payment of cost of Rs.5,000/- to be deposited before this Court within two weeks and shall file receipt thereof showing payment of the said amount with the registry. On such deposit, the client of Mr. Mohta, Advocate is permitted to withdraw the said amount.

6. In view of above, all the applications are allowed. The delay is condoned. The abatement is set aside. The legal representatives of the deceased Marotrao are permitted to be taken on record.

7. Mr. Mohta, learned counsel for the non applicant (1B)-Naresh Tadse submitted that since there is a will in his favour executed by Marotrao, the question under order XXII Rule 10 of the Code be kept open and it be decided at the time of final hearing.

The prayer is accepted.

8. In view of above, the applications are allowed and disposed of accordingly.

9. The earlier civil applications filed on behalf of the applicants for brining the legal representatives on record and setting aside abatement have rendered infructuous in view of the order passed on these applications.

JUDGE

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