

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

27. CIVIL APPLICATION NO. 9051 OF 2017

IN

SA/152/1994

WITH

CA/9052/2017

IN

SA/152/1994

SONU LAXMAN MAHAJAN LRS RAHUL AND ORS.

VERSUS

AMRUTLAL DEVLAL LOHAR LRS MANSUKH AND ORS.

.....

Mr. L.V.Sangit, Advocate for applicants.

Mr. V.C.Solshe, Advocate for R – 1 to 4.

.....

CORAM: V.L.ACHLIYA, J.

DATE : 27/08/2018

.....

ORAL ORDER :

1. The applicants have filed these applications for setting aside the order of abatement and dismissal of appeal dated 09/03/2016 passed by Registrar [Judicial] for the reason set out in detail in the applications and to bring the L.Rs. of original appellant No. 1 and deceased respondent on record.

2. Heard learned counsel for applicants and respondents. Perused record and proceedings.

3. Mr. Sangit, learned counsel for applicants submits that the delay caused in taking steps as well as to bring L.Rs. on record was not

deliberate and intentional but caused due to the reason that applicants were unaware of pendency of the proceeding. The applicants claims to be L.Rs. of original appellant No. 1 Sonu Laxman Mahajan. He submits that appellant No. 2 died on 27/07/1996 leaving behind appellant No. 1 as sole legal representative. Since appellant No. 1 was sole surviving legal representative of appellant No. 2, it was not necessary to apply for bringing L.Rs. of appellant No. 2. During the pendency of appeal, appellant No. 1 expired on 29/01/2009. The applicants were unaware of proceeding pending before this Court. He further submits that during pendency, sole respondent also died. The fact regarding death of respondent was not known to the applicants. In the circumstance, Registrar [Judicial] has passed order of abatement and dismissal of appeal dated 09/03/2016. Since the execution proceeding was pending and after the order of abatement steps were taken to proceed with the execution proceeding, the applicants came to know about pendency of appeal. Therefore, they have moved this Court by way of present applications for setting aside the order of abatement as well as permission to bring on record the names of applicants as L.Rs. of deceased appellant with condonation of delay.

4. On the notice given to proposed L.Rs. of respondent, they appeared through their counsel and resisted the application by filing detail Say. In short, the respondents have denied the cause assigned to condone the delay as sufficient to condone the delay. According to respondents, the reasons assigned are false and concocted. The applicants were fully aware of the proceeding pending before this Court. The Advocate representing the applicants was aware of the death of sole respondent as the pursis to that effect was filed. In spite of that, no steps were taken. In this background, it is contended that the application be rejected.

5. On due consideration of submissions advanced and further taken note of pendency of Second Appeal since the year 1994, I am of the view that the reasons set out in the application deserves to be accepted. There was no reason for the applicants not to take steps and allow the appeal filed to be dismissed. In all probabilities, the steps could not be taken on the ground of lack of knowledge about pendency of appeal and communication between the applicants and Advocate representing deceased appellant.

6. I am, therefore, inclined to allow the applications subject to cost of Rs. 10,000/- [Rupees Ten Thousand] to be payable within two weeks. The cost be paid to the respondents through their Advocate. In case of refusal to accept cost by Advocate for respondents, same shall be deposited in this Court. On payment of cost, both the applications stand allowed in terms of prayer clauses 'A' to 'C' in respective application.

[V.L.ACHLIYA]
JUDGE

KNP/C.A. 9051...2017 in S.A. 152.1994