

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION No.6719 OF 2018

Yashoda Hindurao Lad & Ors.

... Petitioners

Vs.

Kumar Sadashiv Hadadare & Ors.

... Respondents

Mr.P.G. Lad for the Petitioners

Mr.Umesh Mankapure for the Respondents

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 9, 2018**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. Learned Counsel for the respondents submits that his Vakalatnama was filed on 27.4.2018 and no notice was given to him on 3.7.2018, when this Court ordered the trial Court not to proceed with the matter and, therefore, he has moved this matter today on production Board. So, the matter is heard on merits.
3. In this petition, the order dated 31.10.2017 passed by the learned District Judge 3 & Additional Sessions Judge, Sangli in Miscellaneous Civil Application No.51 of 2012, is challenged. The

application was made for condonation of delay and also setting aside the abatement and bringing legal heirs of the deceased Hindurao Lad, on record.

4. Mr.Lad, has submitted that the appellant, has not specifically mentioned that he had knowledge of death of Hindurao Lad. There is an inordinate delay of more than 5 years in bringing on record the legal heirs of Hindurao Vishnu Lad, who died during the pendency of the Civil Appeal No.194 of 2001. He submitted that the lower Court has failed to appreciate that there was no sufficient reason given by the respondents for delay from 2009. He has further submitted that the High Court while entertaining the Second Appeal No.22 of 2009 in Civil Application No.468 of 2010 in Civil Appeal No.22 of 2009, has granted liberty to move application for setting aside the order of abetment and it was not set aside. The first appellate Court ought to have taken into account the ground of no sufficient cause being made out by the appellant to condone the delay.

5. The learned Counsel for the respondents has supported the order passed by the learned District Judge, Sangli and has submitted that the respondents have taken out proceedings time to

time promptly. He has further submitted that the wife of appellant No.1, who is the mother of appellant Nos.2 to 4, was sick and was taking treatment during the period of 2005-2006. Thereafter, she died in the year 2009. Therefore, they could not concentrate on their Court matter and hence, there was a delay in bringing legal heirs of Hindurao on record.

6. As per the submissions of Mr.Lad, the learned Counsel for petitioners, the dates of the proceedings are taken. The suit for redemption and declaration was filed by the plaintiff i.e., the respondents. It was dismissed on 5.5.2001. Thereafter, the appeal 194 of 2001 was filed. In the said appeal, the defendant Vishnu died on 21.7.2003. His legal heirs Hindurao and Mahadeo were brought on record. On 25.5.2006, Hindurao died. Then on 2.8.2008, the appeal was dismissed.

7. Second Appeal No.22 of 2009 was filed and in the said appeal, there was an application for abetment and bringing legal heirs of Hindurao was taken. At that time, the High Court ordered that the decree against the dead persons is a nullity and the First Appeal was restored. The order of High Court was passed in Second Appeal No.22 of 2009 on 20.10.2011 and thereafter, the

Miscellaneous Application No.51 of 2012 i.e., the present application, was filed for setting aside the abetment and delay condonation and also for bringing the legal heirs of Hindurao.

8. After considering this sequence of the proceedings, it appears that the respondents are serious in contesting the matter and they have taken steps time to time. However, it is true that the legal heirs of Hindurao were not brought on record for nearly 5 years. However, during that period, there was a movement of proceedings. The First Appeal was dismissed. The Second Appeal was filed and the appellant was prosecuting the same. The reason given on this background by the appellant that during 2005-2006, the wife of respondent No.1 and the mother of other respondents, was sick as she was hospitalised and ultimately in 2009, she expired and, therefore, they could not concentrate on the Court matter, is acceptable. The learned Judge has taken a balanced view while deciding this application. The respondent, who is plaintiff in this matter, is prosecuting his suit since 2001 and it is to be adjudicated on merits.

9. In the circumstances, the view taken by the learned Judge of the first appellate Court cannot be faulted with and hence, no

interference is required. Hence, the Writ Petition is dismissed. However, the respondents are directed to pay double costs granted by the first appellate Court. The respondents to pay Rs.6,000/- to the appellants. The appeal is expedited and shall be decided on or before 31st October, 2018.

10. Writ Petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)