

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.120 OF 2017
IN
FAMILY COURT APPEAL NO.45 OF 2006

Sou. Nalini Nagnath Upalkar.] ... Applicant

Versus

Shri Nagnath Mahadeo Upalkar.] ... Respondent

Mr. Vikas B. Shivarkar for Applicant.

Mr. Smit Phatale i/b Mr. Yadunath Chaudhari for Respondent.

CORAM :- K. K. TATED &
SARANG V. KOTWAL, JJ.
DATE :- 31 JANUARY, 2018

P. C. :-

1. Heard the learned Counsel for the parties.

2. This Civil Application is preferred by the Applicant – wife for bringing on record the legal heirs of the deceased Respondent Nagnath Mahadeo Upalkar who died on 04/10/2012 and for setting aside the abatement.

3. Mr. Vikas B. Shivarkar, learned Counsel for the Applicant, submitted that the Applicant was suffering from heart problem and also undergone angiography. Therefore, there was delay on her part to give instructions to her Advocate for bringing on record the legal heirs of the deceased Respondent. A copy of the medical papers is placed on record at Exh.B-Colly. The learned Counsel for the Applicant submitted that in the interest of justice, this Court be pleased to condone the delay and allow the Applicant to bring the legal heirs of the deceased Respondent on record. He submitted that if the delay is not condoned, irreparable loss will be caused to the Applicant.

4. On the other hand, Mr. Smit Phatale, learned Counsel for the Respondent, vehemently opposed the present Civil Application. He submitted that the Applicant has not shown sufficient cause for condonation of inordinate delay of more than three years. He submitted that the Family Court Appeal was on board before this Court on 01/07/2013. At that time, they tendered photocopy of the death certificate of the deceased Respondent and the same was taken on record and marked 'X' for identification. He submitted that though the Applicant had knowledge of death of the Respondent on 01/07/2013, the present Civil Application is filed on 09/01/2017. There is no explanation why the Applicant took three years from the date of knowledge of death of the Respondent, for filing the present Civil Application. Hence, the Civil Application to be dismissed with costs.

5. We have heard both the parties at length.

6. The reasons given by the Applicant in paragraph 7 of the Civil Application about her medical condition and in view of the Judgment dated 22/11/2005 passed by the learned Judge, Family Court No.3, Pune, in Petition No.A-65 of 2004, we are of the opinion that the case is made out for allowing the present Civil Application, but at the same time, the Applicant has to pay costs of Rs.3,500/-. Hence the following order.

ORDER

- (i) Abatement is set aside.
- (ii) The Applicant is permitted to bring on record the legal heirs of the deceased Respondent in Family Court Appeal No.45 of 2006, within eight weeks from today, failing with the Civil Application shall stand dismissed without referring back to the Court.
- (iii) If the amendment is carried out within the stipulated time as stated above, the Applicant to provide amended copy of the Family Court Appeal to the Respondent or his Advocate.
- (iv) The Applicant to pay costs of Rs.3,500/- to the Respondent within four weeks from today, failing which the Civil Application shall stand dismissed without referring back to the Court.

- (v) The Applicant to place on record the proof of payment of costs to the Respondent.
- (vi) Interim relief granted earlier on 21/02/2007 in Civil Application No.225 of 2006 to continue till hearing and final disposal of the Family Court Appeal.
- (vii) Civil Application is accordingly disposed of.

(SARANG V. KOTWAL, J.)

(K. K. TATED, J.)