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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1878 OF 2012

Premkumar A. Mishra	...Petitioner
V/s.	
Ramkhelavan R. Avasthi, since deceased through His L.Rs. - Mangesh R. Avashti & Ors.	...Respondents

Mr.S.A. Sawant for the Petitioner.

Mr.Durgesh Kulkarni I/b Lex Firmus for the Respondent No.6.

CORAM : R.D. DHANUKA, J.
DATE : 27TH AUGUST, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 25th January, 2012 passed by the learned District Judge – II, Palghar below Exhibits 15 and 18 in Civil Appeal No.31 of 2008. The petitioner had applied for setting aside abatement order dated 5th October, 2011 insofar as the respondent no.5 is concerned and also similarly had filed another application for bringing the legal representatives of the respondent no.5 on record by filing a separate application on 29th November, 2011. Learned District Judge had passed an order of abatement of appeal insofar as the respondent no.5 is concerned, by an order dated 5th October, 2011.

2. With the assistance of the learned counsel for both the parties, I have perused the documents annexed to the petition.

3. It appears that the proceedings were transferred from one Court to another Court. It is the case of the petitioner that in view of such transfer, the petitioner could not know about the date of death of the respondent no.5 and came to know about such fact only when the paper book was served.

4. A perusal of the order dated 25th January, 2012 indicates that the respondent no.5 had raised an issue before the learned District Judge that it was not necessary to bring the legal representatives on record of the respondent no.5. The respondent no.5 also had opposed the application for condonation of delay on the ground that sufficient cause was not shown by the petitioner.

5. A perusal of the order dated 25th January, 2012 indicates that the learned District Judge has accepted the statement made by the respondent no.5 that the respondent no.5 was not necessary party and thus there was no need to bring the legal heirs of the respondent no.5 on record. In paragraph 8 of the impugned order, the learned District Judge however has decided the appeal itself on merit though had rejected the application for condonation of delay. On one hand, the learned District Judge accepted the statement made by the respondent no.5 that the respondent no.5 was not necessary party

and thus it was not necessary to bring the legal representatives of the respondent no.5 on record and contrary thereto has refused to interfere with the impugned order passed by his predecessor thereby abating the appeal against the respondent no.5. In my view, the order passed by the learned Judge shows total perversity.

6. Insofar as the issue raised by the learned counsel for the respondent no.5 that no sufficient cause was shown by the petitioner for condonation of delay is concerned, I have perused the averments made in the application for condonation of delay and also for setting aside the abatement of appeal insofar as the respondent no.5 is concerned. The petitioner had rendered various reasons in both the applications for seeking condonation of delay as well as in the application for setting aside abatement insofar as the respondent no.5 is concerned.

7. The impugned order passed by the learned District Judge - 2, Palghar being perverse, is set aside. The applications filed by the petitioner (Exhibits 15 and 18) are allowed. The Civil Appeal No.31 of 2008 filed by the petitioner is restored to file.

8. The writ petition is allowed in aforesaid terms. There shall be no order as to costs.

(R.D. DHANUKA, J.)