

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**APPEAL FROM ORDER NO. 7 OF 2019
WITH
CIVIL APPLICATION NO. 2296 OF 2019 IN AO/7/2019**

HAROON BASHIR SHAIKH, SINCE DECEASED THROUGH HIS L.RS.
NAZMA HAROON SHAIKH AND ANOTHER
VERSUS
JAHID HAJI BABAMIYAN AND OTHERS

...
Advocate for the Appellants : Shri R. L. Kute
Advocate for the Respondents : Shri A. T. Patel
...

(CORAM : Ravindra V.Ghuge, J.)

DATE : 12/06/2019

PER COURT :

1. The appellants are aggrieved by the order dated 31/12/2018 passed by the learned District Judge-3, Sangamner, by which Civil Misc.Application No.12/2018 filed by these appellants claiming condonation of delay so as to seek restoration of RCA No.60/2009, has been rejected.

2. The dates and events emerging from the record are as under :-
[a] These appellants preferred RCA No.60/2009 on 29/04/2009.
[b] On 10/01/2016, the sole appellant Haroon Bashir Shaikh passed away.

[c] On 19/04/2016, an application Exh.15 praying for leave to bring the LR's of the appellant on record, was filed.

[d] Exh.15 was allowed and the LR's were directed to be brought on record.

[e] As the said order was not implemented, the appeal stood abated on 12/06/2017.

[f] The decree holders preferred regular darkhast before the Executing Court and the appellant's LR's woke up upon service of summons of the execution proceedings. Execution proceedings were filed on 20/11/2017.

[g] In the meanwhile, a possession warrant, by order dated 12/09/2018, was issued by the Executing Court.

[h] These appellants approached this Court in WP No.11205/2018 and by order dated 31/10/2018, this Court directed the petitioners to deposit an amount of Rs.50,000/- as a condition for staying the possession warrant. The said amount has been deposited.

[i] The petitioners preferred Civil M.A.No.12/2018 on 09/02/2018, which has been rejected by the impugned order dated 31/12/2018.

3. Learned Advocate for the appellants submits that the First Appellate Court is a remedy available to these appellants and if the restoration application is not allowed, the doors of the Court would be closed on these appellants since they would not be able test the judgment and decree delivered against them.

4. The learned Advocate appearing on behalf of the respondents has strenuously opposed the AO. Contention is that the sequence of events would indicate the laxity and negligence on the part of the appellants. As a result of their conduct, the respondents have to suffer rigors of litigation. In the earlier petition, this Court has directed the petitioners to deposit an amount of Rs. 50,000/-. He further submits that the Law will not come to the aid of a sleeping litigant and such litigants are not entitled to any sympathy.

5. I do find that the learned Advocate for the respondents has rightly submitted that the petitioners have acted negligently and on account of their casual attitude, the decree holders are made to suffer litigation. At the same time, I find that if the restoration is not permitted, these appellants will have to suffer the judgment and decree of the Trial Court without even testing the said decree before the First Appellate Court.

6. The impugned order indicates that the Appellate Court has recorded the negligent attitude of these petitioners. They had moved an application for bringing the L.Rs. on record after three months of the death. For 8 months, they did not take steps. Notwithstanding such conclusions, I find that the learned District Judge has lost sight

of the fact that the delay caused is neither deliberate, nor inordinate. These Appellants, who have suffered the decree of the Trial Court, would not be permitted to test its legality before any Court if the restoration is not allowed.

7. Considering the above, this AO is allowed. Civil M.A. No.12/2018 stands allowed and the impugned order dated 31/12/2018 is quashed and set aside. The restoration application filed by the appellants shall be registered and shall be decided as expeditiously as possible and preferably within a period of six months from the date of registration.

8. By way of costs, the appellants shall deposit an amount of Rs. 12,000/- before the First Appellate Court on or before 10/07/2019, failing which, this order shall stand recalled and the impugned order dated 31/10/2018 shall stand restored.

9. If the amount is deposited, the four respondents shall withdraw the said amount in equal proportions, unconditionally.

10. It needs to be recorded that if these Appellants or the Advocate on their behalf seek adjournment on unreasonable grounds, the

Appellate Court would be at liberty to refuse such adjournments.

11. Pending Civil Application does not survive and stands disposed off.

(Ravindra V.Ghuge, J.)