

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8058 OF 2016

PRALHAD NAGO WAGHODE DIED LRS
VERSUS
RAVINDRA GHANSHAM KOLTE AND OTHERS

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Advocate for Petitioners : Shri Patil Prakashsing B.
Advocate for Respondents 1 to 6 : Shri Rane Girish S.
AGP for Respondents / State : Shri Munde S.W.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 05, 2019

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PER COURT :-

1. The petitioners, original defendants are aggrieved by the order dated 31.3.2016, passed by the appellate Court, which reads as under:-

" Applicant and Advocate absent when called. Matter is for hearing. No adjournment advanced. Application is rejected."

2. Consequent to the above, the Misc. Application filed by the petitioners herein, seeking condonation of 87 days of delay caused in preferring the Regular Civil Appeal, has been rejected.

3. This Court (Coram : T. V. Nalawade, J.) has stayed the execution of the decree by order dated 30.9.2016, on the condition

of depositing of Rs.10,000/- in this Court. The said amount is deposited.

4. The learned Advocate for respondents 1 and 6 / original plaintiff and defendants, has strenuously opposed this petition and prays for its dismissal with heavy costs. He submits that the petitioners are in possession of the property and are enjoying the same by delaying the matter. They derive an advantage in causing such delay since they are in possession.

5. Considering the above, I find that the delay of 87 days cannot be said to be inordinate. It is on account of fortuitous circumstances that the proceedings have lingered for about 2 years and 6 months before the appellate Court and for about 2 and half years before this Court. Nevertheless, if the delay is not condoned, these petitioners would be remediless as against the judgment and decree of the trial Court.

6. In view of the above, this petition is partly allowed. The impugned cryptic order dated 31.3.2016 is quashed and set aside and Misc. Civil Application No. 115 of 2014 (Old No. 169 of 2013) stands restored to the appellate Court at Bhusawal. The litigating

sides shall appear before the appellate Court on 24.4.2019. Since this petition is dismissed as against Leeladhar, Digambar and Sunita Lalchand, notices shall be issued to them by the appellate Court, which the petitioners / appellants would serve on such respondents by substituted service through paper publication so as to avoid further wastage of time.

7. The petitioners shall deposit a further amount of Rs.10,000/- in this Court on/or before 20.4.2019 and produce a receipt before the appellate Court on 24.4.2019, failing which, the impugned order shall stand restored and this order shall stand recalled leading to the dismissal of this petition.

8. Learned Advocate for respondent Nos.1 and 6 submits that these two respondents would donate an amount of Rs.2,000/- for the treatment of poor patients to the Government Medical College and Hospital, Aurangabad. Barring the amount of Rs.2,000/-, they would withdraw the rest of the amount with accrued interest from this Court. The Registry shall transfer an amount of Rs.2,000/- to the Medical Officer, High Court Dispensary, Aurangabad.

9. The appellate Court at Bhusawal would decide the Misc.

Application as expeditiously as possible and preferably on/or before the 29th day of February, 2020.

(RAVINDRA V. GHUGE, J.)

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