

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1756 OF 2017

- 1] Mr. Machindra Govardhan Raut,
Age : 34 years, Occu. : Labour,
- 2] Mr. Govardhan Dagdu Raut,
Age : 66 years, Occu. : Labour,
(deleted since he is died as per
Court's Order dated 3.4.2019.)
- 3] Mr. Rajkumar Govardhan Raut,
Age : 31 years, Occu. : Labour,
- 4] Mrs. Sunanda Govardhan Raut,
Age : 61 years, Occu. Housewife,

All R/o : Matephal, Tq. & Dist.
Latur.

...Petitioners

Versus

- 1] The State of Maharashtra,
- 2] Jyoti Machindra Raut,
Age : 28 years, Occu. : Housewife
& Labour,
R/o C/o Kantabai Sheshrao Dalve,
Opposite Vitthal Temple, Near
Post Office,
Bhoi Galli, Kallamb, Dist.
Osmanabad.
- 3] Aditya Machindra Raut,
Age : 11 years, Occu. :
Education,
Under guardianship of his real
mother Jyoti Machindra Raut,

R/o C/o Kantabai Sheshrao Dalve,
Opposite Vitthal Temple, Near
Post Office,
Bhoi Galli, Kallamb, Dist.
Osmanabad.

...Respondents

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Mr. V.B.Anjanwatikar, Advocate holding for
Mr.S.A.Nandure, Advocate for Petitioners.
Mr. A.T.Jadhavar, A.P.P. for Respondents No. 2 and
3.

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CORAM : V.M.DESHPANDE, J.

DATE : 3RD APRIL, 2019

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith. By
consent, heard finally.

02. At the out-set, Mr. V.B. Anjanwatikar,
learned Advocate holding for Mr.S.A.Nandure, learned
Advocate for the petitioners submits that during the
pendency of the present writ petition, petitioner
No. 2-Govardhan Dagdu Raut has expired. His
statement is accepted. In view of the death of
petitioner No. 2 and as per the prayer made by the
learned Counsel for the petitioners, permission is
granted to delete the name of the petitioner No. 2-
Govardhan Dagdu Raut. Amendment to be carried out

forthwith. I have also heard Mr. Ashish Jadhavar, the learned Counsel for the respondents No. 2 and 3 and Mr. S.P.Sonpawale, the learned A.P.P. for the State-respondent No. 1. The respondents No. 2 and 3 filed proceedings against the petitioners under the relevant provisions of Domestic Violence Act. The said proceedings were registered as Miscellaneous Criminal Application No. 9/2015.

03. The said proceedings were contested in all respects by the petitioners. After trial, the learned Judicial Magistrate First Class (Court No. 3), Kallamb on 9.12.2015 partly allowed the proceedings directing the petitioner No. 1 to pay Rs. 1,000/- by way of monthly maintenance in favour of respondent No. 2 herein and Rs. 700/- by way of monthly maintenance for the respondent No. 3 herein till he attains the age of majority and also the petitioner No. 1 was directed to provide Rs. 1,300/- towards rent and the petitioners including the deceased petitioner were directed to pay Rs. 2,500/- to the respondent No. 2 by way of compensation. Also a cost of Rs. 3,000/- was imposed upon the petitioners to be paid to respondent No. 2 herein.

04. The petitioners carried statutory appeal

before the Appellate Court. The appeal was registered as Criminal Appeal No. 2/2016 and was pending on the file of Sessions Judge, Osmanabad. Though, the petitioners were under boundand duty to prosecute the appeal diligently, for the reasons best known to them, they failed and ultimately, the learned Sessions Judge on 3.5.2016 dismissed the appeal by observing as under :

"None present, since long, steps not taken,
appeal dismissed for want of prosecution."

05. After the aforesaid, the petitioner No. 1 alone filed the application for restoration of the Criminal Appeal No. 2/2016 and the said application was registered as Criminal Application No. 231/2017 and from the record it appears that the technical branch of District Court, Osmanabad refused to register the said application on the ground that there is no provision in the Criminal Manual for restoration of the criminal appeal.

06. Thus, primarily, the present writ petition is filed by the petitioners for granting opportunity to them to contest the said criminal appeal on its own merit by restoring the same.

07. After the Order was passed by the learned Magistrate, within the stipulated period, the statutory appeal was carried by the petitioners. It is right of every litigant to test the adverse Order before the Appellate forum. Such step was taken by the petitioners. The Court need not go into the reasons as to why the appeal was not prosecuted diligently. However, fact remains that the Appellate forum did not decide the issue agitated before it on its own merit. Consequently, the petitioners were deprived of getting verdict on its own merit.

08. During the course of the submissions, there is a consensus in between the learned Counsel appearing for contesting parties that the accumulated arrears of maintenance are to the tune of Rs. 80,000/-. Though, the extent of share in agricultural land is disputed by the learned Counsel for the petitioners, it is clear that the petitioner No. 1 is having definite share in the ancestral land situated at Latur. In addition to that he is having laundry business, though, he is denying that the said business is flourishing one.

09. In my view, opportunity should be given to

the petitioners to contest their criminal appeal on its own merit rather shunting them out from the process of law on technical grounds. However, at the same time, the interest of the respondents No. 2 and 3, who are entitled to enjoy the fruits of the litigation is also to be secured. Resultantly, I pass following Order;

ORDER

(i) The Order dated 3.5.2016 passed by District Judge, Osmanabad dismissing Criminal Appeal No. 2/2016 for want of prosecution is hereby set aside.

(ii) Criminal Appeal No. 2/2016 stands restored to the file of District Judge-1 at Osmanabad.

(iii) Parties are directed to appear before the District Judge-1, Osmanabad in Criminal Appeal No. 2/2016 on 25.4.2019 to avoid unnecessary time consuming process of issuance of notice and its service. After the appearance, the District Judge-1 is directed to decide Criminal Appeal 2/2016 as early as possible and preferably within

a period of 8 months from the first date of appearance before it on its own merit.

(iv)The petitioners are directed to deposit cost of Rs. 25,000/- on the day of the appearance i.e. on 25.4.2019 in the Court of District Judge-1, Osmanabad and the respondents No. 2 and 3 will be entitled to withdraw the said cost.

(v)The petitioners are further directed to deposit Rs. 80,000/- in 3 installments from today on or before 24.7.2019 in the Court of District Judge-1, Osmanabad.

(vi)On such deposit of Rs. 80,000/-, the respondents No. 2 and 3 will be entitled to withdraw the said amount.

(vii)If the cost of Rs. 25,000/- is not deposited on the day of appearance i.e. on 25.4.2019, it shall be presumed that the appeal is not restored.

(viii)If any default is made in payment of installment of accumulated maintenance of Rs. 80,000/-, it shall be open for the Appellate Court to take coercive steps against the petitioner No. 1 including his

detention in the Civil prison and imposing further heavy cost since the undertaking of the petitioners that they will deposit the accumulated maintenance in 3 installments has weighed in the mind of this Court for restoring the appeal.

(ix)With this, rule is made absolute.

(x)The writ petition is disposed of accordingly.

[V.M.DESHPANDE]

JUDGE

Dahibhate/-