

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**APPEAL FROM ORDER NO.6 OF 2018
WITH
CIVIL APPLICATION NO. 495 OF 2018 IN AO/6/2018**

**SHAIKH ABDUL SHAIKH HUSSAIN
VERSUS
NAMDEV NIVRUTTI BHANGE DIED THROUGH L.RS.
LAHUDAS NAMDEV BHANGE (PHAD) AND OTHERS**

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Advocate for the Petitioner : Shri S. S. Shaikh
Advocate for Respondent Nos. 2A to 2E : Shri A. P. Sonpethkar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 25th JANUARY, 2019.

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PER COURT :

1. The petitioner is the original appellant before the First Appellate Court. His application for restoration of RCA No. 32/2002, has been rejected by the impugned order dated 15/09/2017.

2. I have heard the learned Advocates for the respective sides for quite some time. Shri Sonpethkar, learned advocate for respondent Nos. 2-A to 2E has strenuously opposed this appeal. His contention is that the Appeal deserves to be dismissed with heavy costs.

3. Since the Appeal from Order arises out of the rejection of an application for restoration of a Regular Civil Appeal, the sequence of events need to be set out for clarity as under :-

(a) RCS No. 112/1995 was filed by the original plaintiff Shaikh Faku, who is the father of the present Appellant.

(b) The suit was re-numbered on transfer to the Ambejogai Court as 49/1997.

(c) On 29/01/2002, the suit was partly allowed.

(d) The Appellant Sk. Husain alias Faku filed RCA No. 32/2002.

(e) On 14/04/2006 the original Appellant Shaikh Husain passed away.

(f) It is submitted by the original respondent that this Appellant had moved an application for bringing the L.Rs. on record in the pending Appeal which was granted. Yet the amendment was not carried out and hence, RCA No. 32/2002 was dismissed in default on 14/11/2008.

(g) The present Appellant filed MCA No. 91/2008 within 30 days on 11/12/2008.

(h) By the impugned order dated 15/09/2017, the said

application has been rejected.

4. Shri Sonpethkar strenuously submits that considering the dates and events, the negligence of the Appellant is apparent. He has casually worked out the proceedings before the Court. Even when the Appellate Court permitted him to bring the L.Rs. of the deceased Appellant on record, he ignored the said order and the Appeal has been dismissed in default. He further submits that the suit was lodged in 1976 and till today the respondents are in litigation owing to the delaying tactics of this Appellant. They are practically in litigation for 43 years as on date. One entire generation has been involved in the litigation and such litigation should attain finality.

5. I find that the submissions of Shri Sonpethkar are appreciable. However, the only issue that needs to be considered is that land Gat Nos. 34A, 34AA, 35, 46A and 46AA are the suit properties. If the Regular Civil Appeal is not restored, an irreparable harm, serious prejudice and manifest inconvenience would be caused to the Appellant. Per contra, the rigors of litigation suffered by the other side can be

softened by imposition of costs.

6. Considering the above, this Appeal is allowed by imposing costs of Rs. 15,000/-(Rs. Fifteen Thousand only) which the Appellant shall deposit before the Appellate Court at Ambejogai in RCA No. 32/2002 on or before 15/02/2019, failing which this order shall stand recalled and the said Appeal shall not be restored. If the costs are deposited, respondent Nos. 2A to 2E in this Appeal, who have participated in the hearing today would be at liberty to withdraw the said costs in equal proportions, without conditions.

7. The litigating sides would appear before the Appellate Court on 15/02/2019 and if the above directions are complied with, RCA No. 32/2002 shall be restored. On the same date, the Appellant shall carry out the amendment and implead himself as the L.R. of the original Appellant Sk.Husain alias Fakru. Since the amendment can be conveniently carried out, freshly typed copy of the RCA is not necessary.

8. The Appellate Court would ensure that the Appeal paper book is prepared expeditiously and preferably on or before 30/04/2019. The litigating sides would, thereafter, advance their oral submissions on the said Appeal and such oral arguments shall be concluded on or before 30/06/2019. Thereafter, the Appellate Court would decide the Appeal on or before 14/08/2019.

9. Pending C.A. No. 495/2018 does not survive and stands disposed off.

(RAVINDRA V. GHUGE, J.)

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