

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 708 OF 2017
IN
SECOND APPEAL NO. 837 OF 2001

Shri Nandkumar Ravansidha Gujare	.. Applicant
Vs.	
Shri Bhanudas Keshav Gaikwad	.. Respondent

Mr.Suresh S.Shah, for the Applicant.
Mr.Nitin P. Deshpande, for Respondent.

CORAM : M.S.KARNIK, J.
DATE : 01st JULY, 2019

P.C. :

Not on board. Taken on board.

2. Heard learned Counsel for the applicant and learned Counsel for the respondent.

3. This is an application for condonation of delay of 14 years and 34 days in filing the application. The Second Appeal which was filed in the year 2001 was admitted on 10/12/2001 and interim relief in terms of prayer clause (a) was granted on

Civil Application filed for staying execution of the decree.

4. The sole respondent died on 14/12/2002.

5. Learned Counsel for the applicant submits that when Second Appeal came up for hearing on 17/02/2017 before this Court, it was informed by the respondent that the sole respondent (original defendant) has expired as far back as in 2002. His legal heirs are not brought on record. This Court accordingly observed that the Appeal stood abated and the same was disposed of. Learned Counsel for the applicant relying on averments made in the application pointed out that the after the death of the sole respondent and after getting knowledge about the death of the sole respondent informed his advocate on 22/02/2005 itself. Even the documents in the form of death certificate and details of the legal heirs were supplied by the applicant to his advocate. The applicant was under the impression that necessary steps would be taken to bring legal heirs of respondent on record. Further pleadings are mentioned

in paragraph 5 of the Civil Application. In the application, it is stated that there is sole legal heir of original respondent.

6. Learned Counsel for the applicant would submit that it is in these circumstances, delay has occasioned and in fact, at his instance, appeal was circulated on 17/02/2017 when it was realised that Appeal stood abated. It is stated that Appeal deserves to be heard on merits and should not be dismissed on technicalities.

7. This application is vehemently opposed by Mr.Deshpande learned Counsel appearing on behalf of the respondent. Inviting my attention to the affidavit in reply filed by respondent opposing the application, it is pointed out that the applicant was all through out aware of the death of the sole respondent. It is not as if the applicant came to know the death of the sole respondent only in the year 2017. For all these reasons and for the reasons mentioned in the affidavit in reply, Mr.Deshpande submitted that the application should be rejected.

8. Heard. In the application, it is specifically mentioned that applicant had informed his advocate about the death of the sole respondent in the year 2005 itself. It is on account of his Advocate who failed to take steps that the application could not be filed in time. In fact, the Appeal was circulated on 17/02/2017 on which date learned Counsel for the respondent informed the Court that sole respondent expired as far back as in 2002. In my opinion, sufficient explanation is found in the application made for condonation of delay in filing the application.

9. For the reasons mentioned in the application, the present application deserves to be allowed subject however to costs of Rs.20,000/- payable to the respondent within a period of 2 weeks from today. The Application is allowed in terms of prayer clause (a) to (c). Interim order operating during pendency of the Appeal stands restored. Amendment to be carried out within one week from today.

(M.S.KARNIK, J.)