

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6895 OF 2018

Shri. Balkrishna R. Bidave
deceased through L.Rs. and ors.
and ors. .. Petitioners
vs.
Nana B. Jadhav (Wagh) and ors. .. Respondents

Mr. Ajay A. Joshi for the Petitioners.
Mr. S.A. Tarale for Respondent Nos.1, 2(a) and 2(b)

CORAM : M. S. SONAK, J.
DATE : 29 MARCH 2019.

ORAL JUDGMENT :-

1] Heard Mr. Ajay Joshi, learned counsel for the petitioners and Mr. S.A.Tarale, learned counsel for the respondents.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the order dated 11th June 2018, by which, learned Trial Judge has dismissed the petitioners' application for condonation of delay and setting aside of abatement insofar as the legal representatives of the original defendant No.2 to the suit are concerned.

4] The record in the present case indicates that the suit had in fact been decreed on 2nd March 2009, after such decree was made, defendant No.2 expired on 26th June 2009.

5] Thereafter, the defendants in the suit, including the legal representatives of the deceased defendant No.2 instituted appeal against the impugned decree dated 2nd March 2009. This appeal was dismissed. Against the same, the second appeal was instituted in this Court and this Court remanded the matter to the learned Trial Judge for disposal of the suit.

6] At this stage, the petitioners had applied for bringing on record in the suit the legal representatives of deceased defendant No.2.

7] According to me, there was really no necessity for the petitioners to have taken out such application. This is because, the Hon'ble Supreme Court, in case of **Mithailal D. Singh and ors. vs. Annabai Devram – 2003(4) Mh.L.J. 721**, has held that once the legal representatives are brought

on record at any stage of proceedings, the same enures for the entire proceedings. In the present case, the legal representatives of deceased defendant No.2 were already on record in the proceedings before the first appellate Court as well as second appellate Court. This would enure for the entire proceedings. At the highest, the petitioners should have applied to the learned Trial Judge for leave to carry out a formal amendment.

8] Instead, the petitioners chose to apply for condonation of delay, setting aside of abatement and leave to bring on record the legal heirs of deceased defendant No.2. The learned Trial Judge, without appreciating the legal position, has refused to condone the alleged delay of over eight years and dismissed the petitioners' application. The learned Trial Judge has also, unnecessarily gone into the issue of whether right to sue survive or not. Since, the legal representatives of deceased defendant No.2 themselves had instituted an appeal and thereafter second appeal, there was no question of going into the issue of right to sue survive or not. If according to the legal representatives of deceased defendant

No.2, no cause of action arises against them, they can always establish this position in the course of trial, in which case the suit can be dismissed as against them, if evidence on record and law so permits.

9] For the aforesaid reasons, the impugned order is set aside and the petitioners are granted leave to formally amend the plaint so as to indicate the legal representatives of the deceased defendant No.2 in the cause title. The legal representatives of the deceased defendant No.2 are therefore, deemed to have been brought on record and the suit cannot be said to have abated against them. Necessary amendment to be carried out within four weeks from today.

10] All contentions of all parties, including in particular, the contention of the legal representatives of deceased defendant No.2 are specifically kept open.

11] Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

12] Since, the suit is already expedited by this Court, learned Trial Judge to ensure that the suit is indeed disposed of expeditiously. All parties to cooperate with the learned Trial Judge in the matter of expeditious disposal of the suit.

13] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)