

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3866 OF 2019

Arun Dwarkanath Mahadik ... Petitioner
Vs.
Waman Shankar Bhoir since deceased through
his legal heirs Somnath W. Bhoir and another ... Respondents

Mr. Satish C. Mande for Petitioner.
Ms Preeti Walimbe for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : APRIL 26, 2019

P.C. :

Heard Mr. Mande, learned Counsel for the petitioner and
Ms Walimbe, learned Counsel for the respondent No.1 at length.

2. This Petition takes exception to the order dated 14.12.2018 passed
by the learned District Judge-2, Kalyan in Civil Appeal No.197 of 2013.
The order reads thus,

“Heard. The sole respondent is died on 28/2/18 (Exh.43). The
appeal stands abated as no legal heirs are brought on record.
The appeal stands dismissed.

sd/-
District Judge-2 & Additional
Sessions Judge, Kalyan”

3. By order dated 27.03.2019, parties were put to notice that subject
to the time constraint and convenience of the Court, Petition will be
disposed of finally at the stage of admission. In view of that order, Rule.
Ms Walimbe waives service for the respondent No.1. Rule is made
returnable forthwith and the Petition is taken up for final hearing.

4. Ms Walimbe has raised preliminary objection about the
maintainability of the Writ Petition. She submitted that petitioner filed

Miscellaneous Application in or about 06.02.2019 for restoration of Civil Appeal No.197 of 2013 and also prayed for condonation of delay of 250 days in bringing legal heirs on record. The Advocate for the petitioner, however, did not press that application. She has invited my attention to the endorsement made by the petitioner's Advocate on that application, which reads thus,

“Application not pressed.

Sd/-
Adv. Rupali R. Sapkal
Dt.12.2.19 ”

4. She, therefore, submitted that as the petitioner has not pressed application for restoration of Civil Appeal, the present Petition is not maintainable.

5. Mr. Mandle has invited my attention to the averments made in paragraph 14 of the Petition. He submitted that application for restoration was not pressed for want of jurisdiction on 12.02.2019. He submitted that the Registry raised objection as regards maintainability of the restoration application, and therefore, the Advocate for the petitioner did not press the application. He further states that petitioner is present in the Court. He assures that today itself, petitioner will pay arrears of rent of Rs.18,128/- in cash @ Rs.824/- per month for the period from July, 2017 to 30.04.2019 to the respondent No.1's Advocate.

6. Ms Walimbe confirms receipt of Rs.18,128/- in cash.

7. In the facts and circumstances of the present case, I am satisfied that petitioner was not properly advised when he did not press the application for restoration of the appeal. In my opinion, the ends of justice will be served by dissolving order dated 14.12.2018 passed by the learned District Judge thereby restoring Appeal as also

Miscellaneous Application filed by the petitioner for restoration of the Civil Appeal as also for condonation of delay of 250 days in bringing heirs and legal representatives on record. Order accordingly. The learned District Judge shall decide the Miscellaneous Application on its own merits and shall not dismiss it on the ground that earlier application was not pressed by the petitioner. The respondents shall file reply to the application for restoration on or before 14.06.2019 and serve copy on the other side during this period. The learned District Judge will fix a suitable date and decide Miscellaneous Application within four weeks therefrom. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

Minal Parab