

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CAS NOS.155, 156 AND 157/2019 IN SA NO.204/2013

Dhanraj Motiram Meshram

..VS..

Changulabai w/o Nandlal Bombale and ors

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Shri Ramaswami, Counsel for the Applicant/Appellant.
Shri Alok Daga, Counsel for the Non-
applicants/Respondents.

CORAM : V.M.DESHPANDE, J.

DATED : JUNE 4, 2019.

1. These are applications for setting aside abatement, condonation of delay in filing application for setting aside abatement, and for brining legal representatives of respondent No.1 on record.
2. Heard learned counsel Shri Ramaswami for the applicant/appellant and learned counsel Shri Alok Daga for proposed legal representatives of respondent No.1(i) to (v).
3. Though respondent Nos.2A and 2B are served, nobody is appearing on their behalf.
4. The present second appeal is already admitted and during its pendency, respondent No.1-Changulabai expired on 2.12.2017. Learned counsel for the respondent did not file an intimation Pursis about her death. Submission is that he was not aware about her death.
5. Be that as it may, according to learned counsel for the appellant, the appellant acquired knowledge about

death of respondent No.1 on May 2018, however he could not gather names of her legal representatives and exact date of death and, therefore, in May 2018 itself an application under RTI was moved to Patwari of village Rengapar, Pandhari where the deceased used to reside.

6. On 19.1.2018 concerned Patwari furnished details in respect of date of death and legal representatives of deceased Changulabai. After gathering the said information, application for bringing legal representatives was moved, however since the application is beyond period of limitation, applications for condonation of delay and setting aside abatement were filed on 4.2.2019.

7. On 22.2.2019, Notices on the present applications were issued. In spite of service of the Notices, except proposed legal representatives of respondent No.1, other proposed legal representatives chose not to remain present before the Court. Copies of the applications were served upon learned counsel for the legal representatives on 6.2.2019, however till today no reply is filed opposing the applications. Thus, statement of facts made on affidavit has to be uncontroverted.

8. In the backdrop of the aforesaid, I am of the opinion that the appellant has made out a case for condonation of delay in moving the application for setting aside abatement, setting aside abatement and bringing legal representatives of respondent No.1 on record.

9. For the reasons stated in the applications, the applications are allowed. Delay caused in moving application for setting aside abatement is condoned.

Abatement is aside. Legal representatives whose names are mentioned in the application be brought on record. The appellant to incorporate their names in cause title of the appeal. Since Notices are waived by proposed legal representatives, there is no need for issuance of fresh Notices on merit of the second appeal.

10. The civil applications are allowed and disposed of as such.

JUDGE

!! BRW !!