

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

WRIT PETITION NO.2080/2018
LEELABAI MAGANBHAI PATEL & OTHERS
Versus
MAOJIBHAI S/O BHIMJI PATEL

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

Court's or Judge's Orders.

Shri S.D.Khati, Advocate for petitioners.
Shri M.R. Joharapurkar, Advocate for respondent sole.

CORAM : A.S.CHANDURKAR, J.
DATED : June 25, 2019

On the request of learned counsel for the petitioners the name of the petitioner no.1 is permitted to be deleted from the array of parties. Deletion be carried out forthwith.

The petitioners are aggrieved by the order dated 27.01.2017 passed by the revisional Court condoning the delay in filing revision application so as to challenge the order passed by the trial Court dated 17.12.2013. On 17.12.2013 the trial Court allowed the application that was filed under Section 10 of the Code of Civil Procedure, 1908 by the petitioner herein. Being aggrieved, the said order was sought to be challenged by the respondent herein. In the process there was a delay of about 39 days. During the pendency of that application the non applicant - Maganbhai Patel expired on 04.11.2014. On 07.01.2015 an application for bringing on record his legal heirs was moved. Without due notice to the legal heirs the Court proceeded further and by the impugned order the delay in filing the revision application was condoned.

Shri S.D.Khati, learned counsel for the petitioners submitted that on the application dated 07.01.2015 the revisional Court ought to have issued notice to the legal heirs so that they could have been brought

on record. But without issuing any notice and by observing that the legal heirs had been heard, the revisional Court proceeded to condone the delay. He has referred to the order dated 24.04.2015 passed in Letters Patent Appeal (LPA St. No.10429/2012) to indicate that the date of knowledge of the death of said Maganbhai has not been correctly stated by the respondent herein.

On the other hand, Shri M.R.Joharapur, learned counsel for the respondent submitted that considering the short period of delay, no interference was called for. Moreover, costs of Rs.one thousand were already deposited.

Perusal of the documents on record indicates that the revisional Court failed to issue notice to the legal heirs of Maganbhai and instead proceeded to condone the delay of 39 days in filing revision application. Perusal of the application for condoning the delay indicates that the applicant therein was not himself responsible for the delay. His counsel had shifted his office and therefore there was a delay in filing the revision application.

Considering this reason which is not attributable to the respondent herein, I do not find any error on the part of revisional Court for condoning the delay of 39 days. Hence though the legal heirs were not issued notice before the said order was passed, considering the reasons mentioned which are found to be acceptable, there is no reason to interfere with the impugned order. The writ petition is therefore dismissed. No costs.

JUDGE