

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

WRIT PETITION NO.3422 OF 2016

Abhay s/o Pralhad Gotekar,
Manewada Road Nagpur

... Petitioner

-vs-

Gopichand Tukaram Nitnaware (Dead)
Through LRs

1. Rambhau s/o Tukaram Nitnaware
and ors.

... Respondents.

Shri S. V. Sohoni, Advocate for petitioner.

Shri R. D. Khobragade, Advocate for respondent Nos.1 to 3.

Shri A. R. Patil, Advocate for respondent Nos.4 to 8.

CORAM : A.S.CHANDURKAR, J.

DATE : June 24, 2019

P.C.

Considering the short question involved, Rule heard finally with consent of learned counsel for the parties.

The petitioner is the original plaintiff who is aggrieved by the order passed by the trial Court below Exhibit-41 thereby rejecting the application as filed for condoning delay in bringing on record the legal heirs of defendant No.1.

2. The plaintiff has filed a suit for specific performance against the respondents-defendants. During pendency of the suit, pursis came to be filed on behalf of the defendant Nos.1 to 4 that the defendant No.1 had expired on 22/12/2014. Said pursis was filed on 17/03/2015. On

06/10/2015 the plaintiff moved an application below Exhibit-41 for bringing on record the legal heirs of defendant No.1 along with an application for condonation of delay. In the said application it was stated that though the defendant No.1 expired on 22/12/2014 information in that regard was received belatedly and hence the delay was caused. The trial Court noted that though pursis had been filed bringing on record the death of defendant No.1, the plaintiff had delayed filing of such application and hence the trial Court proceeded to reject that application. Being aggrieved the present writ petition has been filed.

3. Shri S. V. Sohoni, learned counsel for the petitioner submitted that the pursis had filed on behalf of the defendants was not noted by the counsel for the plaintiff and hence steps could not be taken immediately for bringing on record the legal heirs. There was no deliberate delay and on getting knowledge about the death of defendant No.1, the application came to be moved. There was no reason to specifically cause the delay in bringing on record the legal heirs of defendant No.1.

4. Shri A. R. Patil, learned counsel for the respondent Nos.4 to 8 submitted that said respondents had not given any instructions. Despite various attempts made by him, they have not responded.

5. Perused the documents filed on record. It can be seen that the defendant Nos.1 to 3 are the sons of Tukaram Nitnaware. Though the defendant No.1 expired on 22/12/2014 his other two brothers were already on record as defendant Nos.2 and 3. The estate of the deceased was therefore partially represented. It is true that pursis was filed on behalf of defendant Nos.1 to 4 giving the names of other legal heirs of the defendant No.1. The delay as caused does not appear to be deliberate as it is stated that the counsel failed to note the said pursis. I am therefore satisfied that the delay in bringing on record the legal heirs was not deliberate on the part of the petitioner and the application was liable to be allowed.

6. Accordingly, the order dated 05/12/2015 passed below Exhibit-41 is set aside. The application for condonation of delay is allowed. After condoning the delay, the legal heirs are permitted to be brought on record.

The Writ Petition is accordingly allowed with no order as to costs.

JUDGE