

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

WRIT PETITION NO. 4454 OF 2017

Prashant Waman Nageshwar and anr.

...VS...

Moritram Dayaram Poptani

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

Court's or Judge's orders

Shri N.S. Bhattad, Adv. for the petitioners.

Shri H.D. Dangre, Adv. for the respondent.

CORAM : Z.A.HAQ, J.

DATED : 7th August, 2019

Heard.

The civil suit filed by the respondent seeking decree for specific performance of the agreement dated 14.10.1998 came to be decreed by the trial Court by the judgment dated 10.10.2000. Rambhau Laxman Nageshwar (original defendant) challenged the judgment and decree passed by the trial Court by filing appeal. In the meantime, the decree-holders deposited the entire amount of consideration as directed by the trial Court and got the sale-deed executed through the Court in the execution proceedings. Rambhau Laxman Nageshwar died on 03.08.2012. The petitioners claiming to be the legal representatives of Rambhau Laxman Nageshwar, filed the application seeking permission to come on record as appellants in place of Rambhau Laxman Nageshwar. As there was delay in filing the application for coming on record as the legal representatives of Rambhau Laxman Nageshwar, the petitioners had filed application praying for condonation of delay and setting aside the

abatment. These applications are dismissed by the learned District Judge by the impugned order.

Though the learned District Judge has found that the explanation given by the petitioners (applicants before the District Court) for the inordinate delay in moving the application for coming on record as the legal representatives of Rambhau Laxman Nageshwar was not properly explained, and the delay could not be condoned. the learned District Judge has delved into the merits of the issue as to whether the petitioners are the legal representatives of Rambhau Laxman Nageshwar. The learned District Judge has recorded that the petitioners have not substantiated their claim that they are the legal representatives of Rambhau Laxman Nageshwar, by producing any documentary evidence on record.

One of the submission on behalf of the petitioners is that as the learned District Judge has examined the issue as to whether the petitioners are the legal representatives of Rambhau Laxman Nageshwar or not, the delay in filing the application for coming on record as the legal representatives of Rambhau Laxman Nageshwar is deemed to be condoned. It is submitted on behalf of the petitioners that the petitioners claim to be the legal representatives of Rambhau Laxman Nageshwar on the basis of the Will executed by Rambhau Laxman Nageshwar in favour of the petitioners on 19.03.2008 and registered with the Sub-Registrar, Nagpur – 3 on 19.03.2008. The petitioners further relied on the entries in the revenue records and death certificate of Waman Nageshwar (father of the petitioners) to support their claim that they are legal representatives of Waman Nageshwar

According to the petitioners, Waman Nageshwar (father of the petitioners) was the adopted son of Tikaram Nageshwar and Tikaram Nageshwar was the real brother of Rambhau Nageshwar (appellant in R.C.A. No. 516 of 2012).

The respondent had not filed reply before the District Court to oppose the claim of the petitioners that they are the legal representatives of Rambhau Laxman Nageshwar. The learned Advocate for the respondent submitted that there was no occasion for the respondent to file any reply to the application filed by the petitioners seeking permission to come on record as the legal representatives of Rambhau Laxman Nageshwar, as delay in filing that application was not condoned. It is submitted that the respondent is not admitting the claim of the petitioners that they are the legal representatives of Rambhau Laxman Nageshwar.

Be that as it may, I find that the learned District Judge has committed an error by delving into the issue as to whether the petitioners are legal representatives of Rambhau Laxman Nageshwar or not? The learned District Judge should not have adverted to the issue which arose for considering the application filed by the petitioners for coming on record as legal representatives of Rambhau Laxman Nageshwar, unless delay in filing that application was condoned.

I find that the explanation given by the petitioners for the inordinate delay is not sufficient to condone the delay. Apart from this, the learned Advocate for the respondent has

pointed out that the petitioners have come out with false explanation that they were not aware about the pendency of the proceedings. It is pointed out that in Special Civil Suit No. 1172 of 2011 filed by Smt. Sonali W/o Rajesh Potkotwar against Rambhau Laxmanrao Nageshwar, Prashant S/o Waman Nageshwar and Praveen S/o Waman Nageshwar i.e. present petitioners, in paragraph No. 8, pleaded that Special Civil Suit No. 459 of 1999 filed by the respondent against Rambhau Laxman Nageshwar was decreed and First Appeal No. 77 of 2001 filed by Rambhau Laxman Nageshwar was pending before this Court. It is pointed out that the petitioners were served with summons of Special Civil Suit No. 1172 of 2011 on 18.09.2011 and the petitioners have filed the written statements in that civil suit in January, 2012 and in the written statement, they had admitted the fact about passing of the decree in Special Civil Suit No. 459 of 1999. Though the respondent has placed documentary evidence on record to support his contentions that the petitioners were aware about the filing of the appeal by Rambhau Laxman Nageshwar, the petitioners have not filed any reply/affidavit to counter the submission made by the respondent. Thus, I find that the petitioners have not only failed to explain the inordinate delay in filing the application for coming on record as legal representatives of Rambhau Laxman Nageshwar but have approached this Court with unclean hands and have given false reasons for the delay. Hence, I see no reason to interfere with the impugned order by which the learned District Judge has rejected the application filed by the petitioners praying for condonation of delay in filing the application for coming on record as the legal representatives of Rambhau Laxman Nageshwar.

Shri N.S. Bhattad, learned Advocate submitted that challenge to the other order dated 13.10.2015 is not pressed.

In view of the above, the writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

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