

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

CIVIL APPLICATION (CAO) NO.1300 OF 2017
IN
SECOND APPEAL NO.388 OF 2008 (D)

(Dayaram s/o Ganpat Raut Vs. Mahadeo Daulat Raut)

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

Court's or Judge's orders.

Shri U.P. Dable, Advocate for Appellant.
Ms. R. Paithankar, Advocate for Respondent.

CORAM: ROHIT B. DEO, J.
DATE: 29th APRIL, 2019.

Heard.

2] This application is taken out for condonation of delay of 292 days in filing application for setting aside the abatement order dated 26.08.2016.

3] Record reveals that the application is filed on 25.06.2017.

4] Having perused the contents of the application, this Court has no hesitation in recording that the application is founded on falsehood and the process of law is being abused.

5] In paragraph 3 of the application there is a

categorical averment that while the appellant Dayaram Raut expired on 01.06.2011, his son and power of attorney holder Ramkrishna Dayaram Raut could not contact the counsel to inform about the death of deceased Dayaram Raut. It would be pertinent to reproduce paragraphs 3 and 4 of the application which read thus:

3. The second appeal was admitted and was for fixed final hearing. In the mean while, during the pendency of the appeal, the appellant expired on 1.6.2011 and his Power of Attorney Holder Shri Ramkrishna Dayaram Raut who is son of the deceased appellant resides at Chinchala, Tahsil Kuhi, District Nagpur could not contact the counsel to inform about the death, as he was under bonafide impression that as he was Power of Attorney for his father Dayaram Raut, the second appeal would be continued. His son Amit Raut used to reside in Sita Nagar, Nagpur and was in contact with the counsel. He was working in a shop there. After some time in 2012-13, he left the job and was not in contact with the counsel. The counsel was not having his contact number and whereabouts of the said Amit Raut and therefore, the counsel could not contact him or any of the surviving legal representatives of the appellant.

4. The applicant – Ramakrishna is aged 74 years and resides at remote place at Chinchala Tahsil Kuhi, District Nagpur. He also was not aware about the contact numbers and address of the counsel and after possession warrant was issued, he came down to Nagpur and somehow with the help of some common friend contacted the counsel in his new office and informed him regarding the possession warrant. At that time,

the counsel informed him about the dismissal of the said appeal and informed him about bringing of the L.Rs. so as to prosecute the matter further. It took some time for the applicant no.1 to contact all the L.Rs. and bring them together.

6] The applicants have suppressed every material fact from this Court. The learned counsel appearing on behalf of the respondents has placed on record the proceedings of the execution case RD 15/2007. It is revealed that on 07.01.2013 an application was preferred on behalf of the decree holder – respondent herein for bringing on record the legal heirs of deceased Dayaram Raut. Ramkrishna, who according to the averments in the present application did not contact his counsel to inform about the death of Dayaram, as a fact appeared in the execution proceedings as would be apparent from the application dated 26.09.2013 preferred by Ramkrishna. On 07.04.2014 the legal heirs of deceased Dayaram are brought on record in the execution proceedings. It is apparent that the legal heirs of Dayaram and their counsel were not only aware that the abatement order is passed in the present appeal, the legal heirs are in fact brought on record in the execution proceedings. In execution proceedings, the decree holder is placed in possession on 23.06.2017. This fact is also suppressed in the application which is preferred on 25.06.2017.

7] The learned counsel Shri Uday Dable relies on

the decision of the Hon'ble Apex Court in *Perumon Bhagvathy Devaswom, Perinadu Village v. Bhargavi Amma (Dead) by LRs and others* reported in (2008) 8 SCC 321 and the decision of the Karnataka High Court in *Smt. Sanjeevamma and others v. G. Krishna and others* reported in *AIR 2004 Kar 338*. The reliance on the aforesaid decisions is clearly misconceived. As observed earlier, every material averment in the application is false. There cannot be a greater abuse of the process of law than what is discernible from the application.

8] The application is dismissed with costs of Rs.10,000/-.

9] The costs of Rs.10,000/- to be deposited within four weeks. If the costs are not deposited within four weeks the same shall be recovered from the applicant by the Collector, Nagpur as arrears of land revenue.

JUDGE