

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

WRIT PETITION NO. 5835/2019

Shantabai B. Bhagat & ors.

..VS..

Nandakishor S. Agrawal & ors.

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

Court's or Judge's orders

Shri S.V. Sohoni, Advocate for the petitioner(s)

CORAM : Z.A.HAQ, J.
DATED : 21/08/2019

Heard.

In the civil suit filed by the respondents against 11 defendants, 4 defendants i.e. defendant nos. 4, 5, 8 and 9 died. The plaintiffs filed a common application for bringing the legal representatives of the defendant nos. 4, 5, 8 and 9 on record, and as there was delay in filing this application, an application praying for condonation of delay was also filed. By the impugned order, the trial Court has condoned the delay in filing the application for bringing the legal representatives of the defendant nos. 4, 5, 8 and 9 on record.

The contention of the petitioners (who are legal representatives of the defendant nos. 8 and 9) is that there has been inordinate delay in filing the application for bringing the legal representatives on record and the delay is condoned mechanically and for the asking, without issuing notice to the proposed legal representatives. It is submitted that as the impugned order is passed without notice to the petitioners, it could not be pointed out to the trial Court that the inordinate delay in moving the application for bringing the legal

representatives on record cannot be condoned. It is pointed out that the defendant no. 4 died on 30/07/2018, defendant no. 5 died on 25/08/2001, defendant no. 8 died on 14/05/2010 and defendant no. 9 died on 10/07/2016.

Though there is inordinate delay in filing the application for bringing the legal representatives on record and the submission made on behalf of the petitioners that the plaintiffs have not been able to properly explain the inordinate delay in filing the application for bringing the legal representatives on record appears to be justified to some extent, considering the facts of the case, specially that the civil suit had not abated, and that the claim of the plaintiffs is for agricultural land, I am not inclined to interfere with the discretion exercised by the trial Court in the extraordinary jurisdiction.

One more aspect which is relevant is that out of 3 legal representatives of the defendant no. 8, only 2 legal representatives have filed this petition and out of 4 legal representatives of the defendant no. 9, only 1 legal representative has challenged the impugned order. Three legal representatives of the defendant no. 4, six legal representatives of the defendant no. 5, one legal representative of the defendant no. 8 and three legal representatives of the defendant no. 9 have not joined with the petitioners to challenge the impugned order and the order has become final against those legal representatives.

In view of the above, I am not inclined to interfere with the impugned order.

The writ petition is **dismissed**. No costs.

JUDGE