

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

CIVIL REVISION APPLICATION NO.160 OF 2017

(WASUDEO RAMAJI WANKAR....VS.. SMT. SHEWANTABAI DNYANESHWAR WAGHADE & OTH.)

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

Court's or Judge's orders

Shri M.P.Khajanchi, Advocate for Applicant.
Shri Rohit Joshi, Advocate for Non-applicant Nos. 1 to 4.

CORAM : Z.A.HAQ, J.

DATED : SEPTEMBER 03, 2019.

Heard.

The execution proceedings filed by the non-applicants (decree holders) was dismissed in default on 24th January 2005. The non-applicants filed application on 5th July 2012 praying for restoration of the execution proceedings and as there was delay of about 7½ years in filing the restoration application, an application praying for condonation of delay was also filed. By the impugned order, the learned trial Judge has condoned the delay and has directed that the application praying for restoration of the proceedings be registered.

The facts on record show that in the execution proceedings, one Manohar Ramji Wankar filed an objection, which was rejected. The order passed by the trial Court rejecting objection was challenged by him before this Court in Civil Revision Application No. 777 of 2000. By order dated 28th August 2000, this Court had directed issuance of notice of revision application and had stayed the execution proceedings until further orders. Manohar Ramaji Wankar died on 4th March 2001. As legal representatives of Manohar

Ramaji Wankar was not brought on record, the Civil Revision Application was disposed as abated on 22nd November 2006.

According to the non-applicants, the executing Court could not have dismissed the execution proceedings on 24th January 2005 as the execution proceedings were stayed by this Court. According to the applicant, Civil Revision Application had abated on failure of the legal representatives of Manohar Ramaji Wankar to take steps for coming on record within time prescribed by Order 22 of the Code of Civil Procedure. According to the applicant, Civil Revision Application stood abated after 150 days from 4th March 2001 and therefore, it cannot be said that the stay granted by this Court in Civil Revision Application No. 777 of 2000 was in force on 24th January 2005. This submission made on behalf of the applicant cannot be accepted. The learned Advocate for the non-applicants/decreed holders has rightly pointed out that the provisions of Order 22 of the Code of Civil Procedure are not applicable to the Civil Revision Applications. (See the judgment given in the case of *Manohar Govindrao Siras Vs. Ramchanra Govindrao Siras*, reported in **1975 Mh.L.J. 373**)

It is submitted on behalf of the non-applicants/decreed holders that the order dated 24th January 2005, by which the execution proceedings came to be dismissed itself is unsustainable.

Be that as it may, it would not be appropriate for this Court to comment on the legality of the order dated 24th January 2005 at this stage, as the trial Court is examining it. However, as I find that the non-applicants/decreed holders have not gained anything by not moving application for

restoration of the execution proceedings for a considerable time and the applicant is not put to any prejudice because of the delay in filing the application praying for restoration of the execution proceedings, I am not inclined to interfere with the impugned order by which the learned trial Judge has exercised the discretion judiciously and has condoned the delay.

Hence, the Civil Revision Application is **dismissed**.
In the circumstances, the parties to bear their own costs.

JUDGE

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