

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

Writ Petition No.129 of 2018

(Nilkanth Motiramji Metange .vs. Chanda w/o Raju Kusram and ors.)

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

Court's or Judge's orders.

Mr. M.A. Vaishnav, Advocate, for Petitioner.

Mr. S.U. Bhuyar, Advocate for Respondent Nos. 1 to 3.

CORAM : Manish Pitale, J.

DATED : January 09, 2019.

By this writ petition, the petitioner (original plaintiff and decree holder) has challenged order dated 21.11.2017 passed by the Court of Civil Judge, Senior Division, Amravati, whereby the application filed by the respondents for condonation of delay in filing application under Order 9 Rule 13 of the Civil Procedure Code, 1908, has been allowed. By the said order, delay of about five months in preferring the said application has been condoned.

2. The objection raised by the petitioner in the present writ petition is that the respondents herein, who filed the aforesaid application before the said Court, had no authority to do so because the original defendant i.e. Raju Kusram never appeared before the trial Court during the proceedings in the suit filed by the petitioner and there was nothing to show that the respondents herein were in any manner concerned with the said Raju Kusram. It was further submitted on behalf of the petitioner that it is not even the case of the respondents

that the said original defendant Raju Kusram was dead and that they were entitled as legal heirs to file the aforesaid application in which the impugned order has been passed.

3. The learned counsel appearing for the respondents submitted that they were the legal heirs of the original defendant Raju Kusram. But, on a specific query put to the learned counsel for the respondents as to whether there was any material to show that the said Raju Kusram was dead or that he had been missing for more than a period of seven years, the learned counsel could not refer to any such material.

4. A perusal of the application filed by the respondents under Section 5 of the Limitation Act, seeking condonation of delay in preferring the application under Order 9 Rule 13 of the C.P.C., shows that in the cause title the original defendant Raju Kusram is being shown as being represented through the respondents herein. It is not stated even in the cause title of the said application that the said Raju Kusram is dead. Therefore, it is difficult to understand as to what is the status of the respondents herein to approach the Court below and to file the aforesaid application. All these aspects have been completely ignored by the Court below while passing the impugned order in a mechanical manner and condoning delay as prayed by the respondents. Since this Court finds that the respondents have failed to demonstrate their entitlement based on any status to represent the

original defendant and it is an admitted position that the original defendant has not approached the Court below to file the application in question, the impugned order is found to be wholly unsustainable and liable to be set aside.

5. In the light of the above, the present writ petition is allowed. The order dated 21.11.2017 passed by the Court below is quashed and set aside and it is held that the respondents herein are not entitled to maintain proceedings before the trial Court in respect of the decree passed in favour of the petitioner.

JUDGE

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