

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

CAS No.315/2019 in Second Appeal No. 213 OF 2005

Jivan s/o Pandu Kapgate and others
 vs.
 Shri Thakram s/o Mohan Kosre and others.

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

Court's or Judge's order

Shri P.G.Anandikar, Advocate holding for Shri
 P.A.Markandeywar, Advocate for the Appellants.
 Mrs.S.C.Deo, Advocate for Respondent nos.1,2 and 4.

CORAM : MILIND N. JADHAV, J.
DATED : 13/01/2020.

Heard Shri P.G.Anandikar, learned counsel holding for Shri P.A.Markandeywar, learned counsel, who represents the Applicants/Appellants and Mrs. S.C.Deo, learned counsel appearing on behalf of Respondent nos.1, 2 and 4.

2. The present Civil Application has been taken out by the Appellants for bringing the legal heirs of deceased Respondent no.2 on record. Respondent no.2 expired on 31.5.2014. The names of his legal heirs are given in paragraph 3 of the application.

3. The Respondents have filed affidavit-in-reply to the application, *inter alia*, placing on record the denial in respect of the allegations made in the application

pertaining to information and notice, which was required to be given on/or received on/or exchanged between the parties.

4. Be that as it may, in the interest of justice, as also the present Second Appeal taking exception to the orders dated 17.4.2003 and 24.11.2004 has remained pending for such a long period of time, the present Civil Application can be disposed of by the following order:

(i) Civil Application is allowed, for the reasons stated in the application.

(ii) Delay of 1533 days is condoned, with a direction to pay costs of Rs.5000/- to the contesting Respondents. The abatement, if any, is set aside.

(iii) The names of legal representatives shall be impleaded and the Second Appeal shall be amended within a period of two weeks from the date of this order.

5. Considering the conduct and history of the Appellants in the past, it shall be required of them to carry out the amendment as directed. Mrs. Deo, learned counsel waives notices on behalf of the contesting Respondent nos.1, 2 and 4.

6. It has been informed by Shri P.A.Anandikar, learned counsel appearing on behalf of the Appellants

that Advocate P.A.Markandewar who has filed his Vakalatnama on behalf of the Appellants is indisposed due to ill-health and shall take two months to recover and attend this Court and therefore, this Court should adjourn the hearing of this case after two months.

7. Considering the exception taken to the orders passed in the years 2003 and 2004 and long passage of time, the request made by Shri Anandikar is rejected.

8. It shall be open for the Appellants to appoint fresh counsel/Advocate on record, if the existing counsel is not in a position to appear before the Court on the next date. As a matter of fact, because of the reason of indisposition of the learned counsel of the Appellants, time of four weeks is granted to enable the newly appointed Advocate/Counsel to take instructions from the appellants and prepare the case, so that the Court will be in a position to hear the matter on the next date.

9. Civil Application is accordingly disposed of in the above terms.

JUDGE

Ambulkar