

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

Civil Application (CAS) No. 378 of 2020
IN
Second Appeal Stamp No. 6822 of 2020

Rambhau Fakiraji Kale Through LR VS. Narayan Shrirahi Deshpande (Dead)
Through LRs.

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

Court's or Judge's orders

Dr. Mrs. R.S. Sirpurkar, Advocate for the petitioner
Mr. P.S. Gode, Advocate for respondent No.4.

CORAM : MANISH PITALE, J.

DATED : OCTOBER 06, 2020

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. This is an application filed on behalf of the appellant now said to be represented by his legal representative for condonation of delay in filing the Second Appeal. In the application, it is pointed out that the impugned judgment and order was passed on 06/12/2019. By taking into consideration the time consumed in obtaining certified copy of the impugned judgment and order, the period of limitation was to expire on 06/03/2020.

3. The Second Appeal along with application for condonation of delay was filed on 03/07/2020 and it stated in the application itself that there has been delay of 116 days. Certain reasons have been put-forth. But, the learned counsel for the applicant / appellant has relied upon an order dated 23/03/2020, passed by the Hon'ble Supreme Court while exercising power under Article 142 of the Constitution of India, whereby after taking into consideration the circumstances created by the Covid-19 crisis, it has been directed that the period of limitation under general and special law shall stand extended until further orders. According to the learned counsel for the applicant / appellant, the present case is clearly covered under the said direction of the Hon'ble Supreme Court and that, therefore, even if the present application and Second Appeal were filed on 03/07/2020, it cannot be said that the appeal suffers from delay.

4. In response to the said contention raised on behalf of the applicant / appellant, the learned counsel for the respondents opposed the same and submitted that the certified copy in the present case was obtained by the applicant / appellant on 30/12/2019 itself and that, therefore, the benefit of the order of the Hon'ble Supreme Court may not be available in the present case.

5. Having heard the counsel for rival parties, this Court is of the opinion that when admittedly the period of limitation in the present case would have expired on 28/03/2020, the order passed by the Hon'ble Supreme Court on 23/03/2020, covers the case of the applicant / appellant also. Accordingly, it is held that the

Second Appeal has been filed within limitation as per the extended period of limitation granted by the Hon'ble Supreme Court and that, therefore, there was no necessity to file this application for condonation of delay.

6. In view of above, the present application is disposed of as such.

Civil Application (CAS) No. 464/2020, Civil Application (CAS) No. 463/2020 and Civil Application (CAS) No. 462/2020 in Second Appeal Stamp No. 6822/2020.

(Applications for bringing LR on record, for setting aside abatement and for condonation of delay in bringing LR on record.)

These applications have been filed seeking permission to bring on record legal representatives of deceased original plaintiff, as also for condonation of delay in filing the said application and for setting aside abatement.

2. At the outset, it is submitted by the learned counsel for the applicant that the application for condonation of delay in bringing the legal representative on record and for setting aside abatement were unnecessary, considering the fact that the original plaintiff died on 08/05/2020 and the application for bringing legal representative on record was moved on 03/07/2020, along with Second Appeal, which was within the period of limitation of 90 days.

3. In these circumstances, it is held that the applications for condonation of delay in bringing legal representative on record and for setting aside abatement are unnecessary and superfluous. Therefore, they are disposed of.

4. In respect of application for bringing legal representatives on record, it is pointed out that the original plaintiff, who had been pursuing the matter, died on 08/05/2020 i.e. after the impugned judgment and order dated 06/12/2019 was passed. The details of the sole legal representative are stated in the application. The record also shows that while the original plaintiff, who was to file the appeal, expired on 08/05/2020, the present application have been moved within the limitation of 90 days on 03/07/2020, along with Second Appeal. Considering the contents of the application, despite vehement opposition on the part of the respondents, this Court is of the opinion that in the interest of justice the present application deserves to be allowed. Accordingly, the same is allowed.

5. List the Second Appeal along with other applications for further consideration on **14th October, 2020**.

JUDGE