

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

Writ Petition No.3888 of 2019
DR. Sharad Bhalerao and Anr. Vs. Anjali Joshi and others

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

Court's or Judge's orders

Mr. N.B. Kalwaghe, Advocate for the petitioners
Mr. K.P. Sadavarte, Advocate for the respondent No.1.

CORAM : MANISH PITALE, J.

DATED : JANUARY 28, 2020

The present writ petition has been filed by the original applicants / appellants challenging order dated 15/03/2019, passed by the Court of Principal District Judge, Buldhana (Appellate Court), whereby an application at Exh.26, filed by the petitioners seeking amendment of their application for restoration of appeal, has been rejected.

2. The Appellate Court has held that the facts sought to be brought on record are already available on record and that there is no explanation on the part of the petitioners for seeking amendment at the stage when the application for restoration was being heard for orders.

3. It is submitted by the learned counsel appearing for the parties that the contesting

respondent in the present case is only respondent No.1, who is already served and represented through counsel. Therefore, although the office note shows that the respondents No.2 and 3 are yet to be served, the petition could be heard finally. This is because, it appears that the respondents No.2 and 3 and other respondents, except respondent No.1 can be said to be proforma respondents and supporting the petitioners herein. Therefore, service on respondent Nos.2 to 5 is dispensed with.

4. It is submitted on behalf of the petitioners that the Appellate Court has committed error in rejecting the application because proposed paragraphs sought to be added by way of amendment only seek to elaborate the reasons already placed on record by the petitioners to explain why they could not attend the proceedings before the Appellate Court when the appeal stood dismissed in default. It was submitted that, by permitting such amendment ends of justice would be met and no prejudice would be caused to the respondent No.1 herein. On the other hand, leaned counsel appearing for the respondent No.1 submitted that if the history of the proceedings was perused, it would show that the petitioners and the proforma respondents have been ensuring that the proceedings languish before the Court, without any finality and net result is that the respondent No.1 is deprived of the orders passed by the original Court in her favour. The

learned counsel for the respondent No.1 expressed apprehension that if the amendment was to be allowed, the petitioners would be successful in further delaying the matter before the Appellate Court and, therefore, the impugned order needs to be confirmed.

5. A perusal of the proposed amendment sought by the petitioners shows that the petitioners seek to elaborate upon the reasons stated in the application for restoration of appeal regarding failure on their part to attend the appeal when it was dismissed in default. The petitioners appear to be a senior citizens, aged about 81 years and 72 years respectively and it is stated in the proposed amendment that they were required to visit their children, who are living abroad. It is also sought to be stated by way of amendment that the counsel representing them could not inform them about the stage of the appeal properly, resulting in orders dated 15/03/2019 and 13/09/2013, passed by the Appellate Court. Considering the fact that the proposed amendment seeks to elaborate reasons already indicated in the application for restoration of the appeal, it would be in the interest of justice that the amendment is allowed and the impugned orders are set aside. But, at the same time, the apprehension expressed on behalf of the respondent No.1 regarding unnecessary delay in the proceedings needs to be addressed. The record of the case before the Appellate

Court shows that the appeal has been pending for long period of time, because it was initially filed before this Court and later it stood transferred to the Appellate Court. In order to ensure that the proceedings before the Appellate Court are not unnecessarily delayed any further, this Court proposes to give certain directions.

6. In view of above, the writ petition is disposed of in following terms :

a) The application at Exh.26, filed on behalf of the petitioners is allowed. Consequential amendment shall be carried out by the petitioners before the Appellate Court within a period of three weeks from today.

b) The Appellate Court shall take up the application for restoration bearing MJC No.119/2013, for final hearing and disposal expeditiously. The Appellate Court shall ensure that the said application is finally decided within a period of eight weeks from today.

c) If the said application for restoration of appeal is allowed in favour of the petitioners, the Appellate Court shall immediately take up the appeal for final hearing.

7. It is directed that the Appellate Court need

not issue any further notice in the appeal if it stands restored, as all the parties are already before the Appellate Court in proceedings bearing MJC No.119/2013. Therefore, in the event, the appeal is restored, it shall be decided by the Appellate Court finally within a period of six months from the date of restoration of the appeal.

8. The writ petition is disposed of in above terms. No costs.

JUDGE

MP Deshpande