

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.8981 OF 2021
IN SA/572/1999

RAM SHANKARRAO NAGARGOJE, DIED, LRS, LIMBABAI, DIED, LRS,
VITTHAL AND ANOTHER

VERSUS

VALJNATH SHANKARRAO NAGARGOJE

...

Mr. S.G. Chapalgaonkar, Advocate for applicants

Mr. V.V. Bhavthankar, Advocate for the sole respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 30th AUGUST, 2021.

PRONOUNCED ON : 21st SEPTEMBER, 2021.

ORDER :

1 Present application has been filed for condoning the delay of 5302 days in bringing the legal representatives of applicant No.1 and delay of 6799 days in bringing the legal representatives of applicant No.2 on record.

2 Heard both sides.

3 The applicants are the original defendants and appellants in First Appeal, who filed the Second Appeal No.572 of 1999. The said Second

Appeal is pending for admission before this Court. However, in the meantime, appellant No.1 Ram @ Rambhau Shankarrao Nagargoje expired on 12.11.2006. Prior to that applicant No.2 Limbabai w/o Ram Nagargoje expired on 07.10.2002. The applicant No.3 Vitthal Ram Nagargoje is their son, who is already on record as appellant No.3, however, they are survived by applicant No.4 Pandurang, who remained to be brought on record. Hence, this application. It is stated that there is no abatement of the appeal, as one of heir was already on record. Applicant No.4 was not aware about the pendency of the proceedings, as it was looked after by his father and thereafter by the brother. When the matter came to be listed on 27.07.2021 and the Advocate informed about the said fact to the applicants, it was felt necessary that the applicant No.4 be brought on record. The delay is unintentional and it is prayed that it be allowed.

4 The respondent has objected to the application, taking into consideration the huge and inordinate delay.

5 At the outset, when one of the legal heirs was already on record, then practically there may not be an abatement. However, the said applicant No.3 was very well aware about the pendency of the Second Appeal, death of his parents and the fact that applicant No.4 is another heir left by his parents. It is not necessary that applicant No.4 should know about the proceedings. It

would have been definitely sufficient for the applicant No.3 to bring the application for bringing applicant No.4 on record. No plausible reason in that way has been given.

6 Another point, that is, required to be harped upon is that the Second Appeal has been filed in the year 1999 and it is yet awaiting admission. This is the pathetic situation. Another fact to be noted is that applicants were not diligent in prosecuting the matter. When the matter was taken up for admission on 07.02.2006, it appears that a statement was made that the parties would explore the possibility of amicable settlement and then the matter was got adjourned. However, thereafter, when the matter was called out on 06.06.2006, the Advocate for the appellants was absent. The appeal was dismissed in default. The appellants then filed Civil Application No.8964 of 2006 for restoration of the Second Appeal and by order dated 26.06.2009 the application was allowed. The Second Appeal was restored. Thereafter, till 27.07.2021 the matter was not even got for circulation. The applicants are unable to give any reason for the same. However, one more fact that is then required to be considered that when the applicant/appellant No.2 had expired on 07.10.2002, then how she could have been the party to the application for restoration of the Second Appeal. But instead of going deeply into that aspect, suffice it to say that even to the said application the

legal representatives of appellant No.2 (except present applicant No.4) were party. The only intention behind putting all these things into the order is to show the lethargic approach by the applicants in prosecuting the matter. Though the suit decreed against them and their appeal was dismissed; yet, they were not serious in prosecuting the matter and further it is to be seen that the present respondent-original plaintiff, in whose favour the decree has passed, has not made a statement that he has got the decree executed. In fact, there was absolutely no stay to the Judgment and Decree since 1999, at least. If the parties do not themselves take interest in the matter, assert their rights and further the Advocates are not taking due interest, then the Courts may not help such negligent litigants. This is the unfortunate scenario of the civil matters, as parties and Advocates are not paying due attention.

7 For the delay, that has been caused, the only remedy, that is now available, would be to compensate the respondent adequately and to take up the matter immediately for admission. Hence, the following order.

ORDER

1 The delay caused in bringing the legal representatives of applicant Nos.1 and 2 is hereby condoned, subject to deposit of costs of Rs.50,000/- (Rupees Fifty Thousand only), within a period of one month

from today.

2 After the amount is deposited, amendment be carried out, within a period of one week. In other words, deposit of costs is pre condition to carry out the amendment.

3 After the costs is deposited, it be given to the respondent.

(Smt. Vibha Kankanwadi, J.)

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