

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

CIVIL APPLICATION (CAS) NOS. 285/2018 AND 286/2018 IN
SECOND APPEAL STAMP NO. 22103/2017

Natthuji s/o Kisan Belsare (since dead), through Legal heirs Dhanraj s/o Natthuji Belsare and others **Versus** Kashinath s/o Kisan Belsare and others.

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

Court's or Judge's Orders

Shri A.S. Dhore, Advocate for the applicants.

CORAM : S.M. MODAK, J.

DATE : 28/09/2021.

Civil Application (CAS) No. 285/2018

Heard learned Advocate for the applicants.

This application is filed by the applicants therein, who are the legal representative of original plaintiff – Natthuji. The said Natthuji is the respondent in Regular Civil Appeal No. 499/2009. The said appeal was allowed and the suit was dismissed. The said Natthuji was the plaintiff before the Trial Court.

The said Natthuji expired on 05/01/2011. It means that he expired when the appeal was pending before the First Appellate Court. The counsel for respondent- Natthuji therein had informed to the First Appellate Court by filing a Pursis about the death of Natthuji on 05/01/2011 and the details of legal representatives. It was intimated on 01/08/2011. Copy of that Pursis is shown to me.

Apart from that, the counsel for respondent had also prayed to the First Appellate Court for dismissal of the appeal, in view of death of the sole respondent.

The grievance is that the First Appellate Court has not decided those grievance and proceeded to dispose of the appeal.

Civil Application No. 285/2018 is filed for condonation of delay caused in setting aside the abatement and setting aside the abatement arisen due to not bringing the legal representatives of deceased respondent - Natthuji. It is submitted that this application has been filed due to office objection. The contention is that, in fact, the appeal could not abate for not bringing the legal representative of sole respondent- Natthuji but it ought to have been dismissed, as per the request made before the First Appellate Court.

Civil Application (CAS) No. 286/2018 is filed for permission to bring on record legal representatives of deceased plaintiff – Natthuji and to prosecute the further proceedings.

Notice was ordered to be issued on 24/02/2018 on all the applications. Notice is also served. Respondent Nos. 3 and 6 have put in appearance, whereas the respondent Nos. 2 and 5 though served have not appeared. Respondent No.1 is dead and respondent Nos. 2 to 5 are his legal representatives. Pursis to that

effect is filed by the appellants bearing Stamp No. 11707/2019.

There is no reply in spite of the service as mentioned above. The name of respondent No.1 be deleted, as he is dead, from all the applications.

It is true that the photo copy of the Pursis and request to dismiss the appeal in view of the death of respondent - Natthuji are filed before this Court, they are plain copies and not certified copies. It is true that it is not countered on behalf of served respondent. This grievance is kept open and this can be agitated when the appeal will be heard. As on today, this Court feels that there was no question of abatement of the appeal. Hence, there is no need to file an application for setting aside the abatement.

So, in view of the above observations, Civil application (CAS) No. 285/2018 is disposed of.

There is no dispute by the served respondent about the present applicants being the legal representatives of deceased Natthuji. The legal representatives need to be given permission to prosecute the appeal, when the dispute pertains to property. In view of that permission is granted to prosecute the present proceedings.

Civil Application No. 286/2018 is allowed.

Civil Application No. 283/2018

There is a delay of 291 days in preferring Second Appeal. Even though the death certificate of Natthuji is not filed on record, the legal representative have stated on affidavit in para No.7 of Civil Application No. 285/2018, that Natthuji expired on 05/01/2011.

The reasons stated by his legal representatives for condonation of delay are pleaded in para No.5 of the application. It is supported by the documents by way of photo copy of the medical certificate and the death certificate of Shanta-wife of the applicant No.1. They are convincing. In view of that, delay in preferring an appeal is condoned.

Civil Application is disposed of.

JUDGE