

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

Civil Application (CAS) No.560/2020
IN
Second Appeal Stamp No.12975/2020

Harish s/o Bhaurao Pulli (alias Pilley) & Ors. Vs. Lodge Berar No.28, GLI, Amravati by trustee
Master Vijay Prakash Kanoria & Ors.

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

Court's or Judge's Orders

Shri C.B. Dharmadhikari, Advocate for the Applicants/Appellants.
Shri R.L. Khapre, Senior Advocate a/b Shri K.P. Mahalle, Advocate for the
Respondent No.4.

CORAM : S.M. MODAK, J.
DATE : 27th SEPTEMBER, 2021.

Heard learned Advocate Shri C.B. Dharmadhikari for the
applicants/appellants and learned Senior Advocate Shri R.L. Khapre
for respondent No.4.

02] The present applicants are the original defendants. The
suit for possession filed by the present respondents was decreed,
whereas the first appeal was dismissed. There is a delay in filing
second appeal and that is how this application for condonation of
delay.

03] Respondent No.4 one of the trustee of the plaintiff's Trust
has appeared as he is on caveat. In the present appeal, the appellant
Nos.2 to 5 have filed a Civil Application No.69/2021 for transposing
appellant No.1 as respondent No.8. It is on account of differences of
opinion amongst them. There is also mention that earlier to the
present appeal, all the appellants have filed Second Appeal Stamp
No.11847/2020. It is against the same judgment of the first Appellate
Court. Present appellant Nos.2 to 5 do not want to prosecute that

appeal.

04] Learned Senior Advocate Shri Khapre also submitted that the transposition application will be maintainable in the appeal which was filed earlier in time. He has also shown to me the status of that appeal taken from the website of this Court. It was lastly fixed on 18th March, 2021 at pre-admission stage. There is no dispute that both these appeals are preferred against the same judgment.

05] If the present appellants do not want to prosecute the earlier appeal, they are free to do it. Still the issue remains and it is about continuation of the earlier appeal by appellant No.1. In view of that, the Second Appeal Stamp No.11487/2020 be kept along with the present appeal. Once the issue of continuation of appeal will be resolved, further action about issuing notice and deciding transposition application will be decided.

Civil Application (CAS) No.614/2021

01] Present respondent Nos.2, 3 and 6 are the trustees of plaintiff's Trust. They expired. Copies of their death certificates are not filed. Learned Senior Advocate Shri Khapre is also not disputing their death. It is true that in the prayer clause (1) and paragraph 2 of the said application instead of describing respondent No.3, appellants have described respondent No.4.

02] Oral prayer is granted to correct respondent No.4 to respondent No.3 in the body of the application.

03] Amendment be carried out.

04] In view of the above situation, the names of respondent

Nos.2 , 3 and 6 be deleted from the array of the respondent.

05] The civil application is disposed of.

06] Matter be kept on 7th October, 2021.

JUDGE

vijay