

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

Civil Application (CAS) No.625/2019
IN
Second Appeal No.130/2009

Pandurang s/o Fago Bhanuse Vs. Laxman s/o Fago Bhanuse & Ors.

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

Court's or Judge's Orders

Shri S.D. Patil, Advocate h/f Shri S.P. Kshirsagar, Advocate for the Appellant.
Shri K.B. Ambilwade, Advocate for the Respondents.

CORAM : S.M. MODAK, J.
DATE : 16th SEPTEMBER, 2021.

The appellant wants issuance of a direction to the trial Court to appoint the Court Commissioner. The respondents' reply is ready. Learned Advocate to file it on record.

Civil Application (CAS) No.748/2019

Respondent No.3-Dashrath Bhanuse expired and the appellant got knowledge when it was informed by his learned Advocate on 15th July, 2019 and when the matter was listed. There is no dispute about his death. According to the respondents, the application has not been filed in time from the date of his death. There is no prayer for setting aside the abatement.

According to the learned Advocate for the appellant, the application is filed on 14th August, 2019. That is within time from the date of knowledge on 15th July, 2019. The prayer for condonation of delay and setting aside the abatement is made in the application itself.

It is true that respondent No.3 is the brother of respondent No.1. Be that as it may, I want to give the benefit to the appellant about getting a knowledge about his death where it is specifically informed by the learned Advocate for the respondents on 15th July, 2019. Since then, the application is filed in time.

I don't find any illegality if a single application is filed containing the prayer for condonation of delay, setting aside the abatement and bringing on record the legal representatives. It is submitted that the appellant has not avoided the payment of court fee as court fee Rs.60 is annexed to the application. It is accepted. Hence the order:-

1. The application is allowed.
2. The name of respondent No.3-Dashrath Fago Bhanuse be deleted and the names of his legal representatives be added.

They are already served. Learned Advocate Shri Ambilwade undertakes to file power for the legal representatives of deceased respondent No.3 on the next date.

The civil application is disposed of.

Civil Application (CAS) No.108/2020

Respondent No.1-Laxman Bhanuse expired on 3rd September, 2019. Copy of death certificate is annexed. His legal representatives are also served. The application has been filed in time. Hence, the order:-

1. The application is allowed.

2. The name of respondent No.1-Laxman Bhanuse be deleted and the names of his legal representatives be added.

They are already served on this application. Learned Advocate Shri Ambilwade undertakes to file power for the legal representatives of deceased respondent No.1.

The civil application is disposed of.

Matter be kept on 14th October, 2021 for filing power and reply/argument on Civil Application (CAS) No.625/2019.

JUDGE

vijay