

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

Civil Application [CAS] No.1034 of 2019

in

Second Appeal St. No.22009 of 2019

(Nina Awdhoot Pawar {Dead} through L.Rs. & others

vs.

Ramesh s/o Shankar Pawar & 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.J. Thakkar, Advocate for the Petitioners.

Shri S.H. Ade h/f Shri A.R. Prasad, Advocate for Respondent No.1.

CORAM : S.M. MODAK, J.

DATE : 21st OCTOBER, 2021.

Read the pursis thereby informing that respondent No.1- Ramesh Pawar and respondent No.2-Kadu Pawar (deceased) are the only legal heirs of deceased respondent No.3-Smt. Parwatabai Pawar. Respondent No.1 and respondent No.2 are the sons of deceased-respondent No.3. This pursis is filed in the office today itself. Office to tag that pursis to this file.

Even the Farad-Sheet says about non-service upon respondent No.3, as she is reported to be dead. In the copy of execution application filed before the executing Court, respondent No.3-Smt. Parwatabai Pawar is shown as dead. Copy of that execution is taken on record and marked as Annexure-X. In view of that, respondent No.1 and respondent Nos.2(i) to 2(iv) be considered as legal heirs of deceased respondent No.3.

Respondent Nos.2(i) to 2(iv), though served, have not appeared. Respondent No.1 is represented by the Advocate. He has opposed to the condonation of delay of 23 days and alternatively asked for the costs.

Perused the application and the reasons stated in paragraph No.3 of the application. The present appellant is a defendant and he has been directed by the trial Court to remove the encroachment and hand over possession. Her first appeal was also dismissed. As the judgment of the trial Court is confirmed by the first appellate Court, she through her legal heirs wants to file the second appeal. I find the reasons stated in paragraph 3 as convincing. They took time to obtain the death certificate of respondent No.2-Kadu thereafter they took time to locate the address of legal heirs of deceased respondent No.2. The reasons are convincing. I do not think that costs need to be imposed.

Delay of 23 days in preferring the second appeal is condoned. The application is disposed of. The appeal be registered after due scrutiny.

Second Appeal St. No.22009/2019:

This Court will have to hear the appellants on the point of framing of substantial questions of law. Learned Advocate for respondent No.1 be supplied with the copy of memo of appeal and stay application. He waives notice on behalf of respondent No.1.

In view of that, the second appeal be kept for arguments on admission on 30th November, 2021.

Civil Application [CAS] No.666/2021:

Heard the learned Advocate for the appellants.

It is true that the respondents need to be given time to file reply. The execution has been filed before the executing Court by all the decree holders/legal heirs.

The execution is stayed till filing of reply by respondent No.1. There is no need to issue fresh notice to legal heirs of deceased-

respondent No.2. If the appeal will be admitted, then fresh notice will be issued to them. The appellants not to part away possession of the suit property or not to sell it or transfer it in any manner.

**sandesh*

JUDGE