

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

APPEAL AGAINST ORDER NO. 35 OF 2022

- 1) Rubinaz P. A. Kadar (Since Dead)
through her Legal Heirs :
 - i) Md.Harun Muzaffar Hussain,
Aged about 63 years, Occupation : Labour
 - ii) Md.Asim Md.Harun
Aged about 38 years, Occupation : Labour
Both R/o. Sabanpura, Amravati
 - iii) Saminabano Sheikh Rizwan
Aged about 36 years, Occupation :
Household, R/o. Near School No.8,
Jameel Colony, Amravati, Tq. & Dist.
Amravati
 - iv) Humera Bano Md. Nawaz
Aged about 34 years, Occupation :
Household, R/o. Gulshan Nagar, Karanja,
Tq. Karanja, Dist. Washim
 - v) Salma Parveen Md.Irfan,
Aged about 31 years, Occupation :
Household, R/o. Near School No.8,
Jameel Colony, Amravati, Tq. & Dist.
Amravati
 - vi) Soema Sadaf Abdul Raees
Aged about 29 years, Occu. Household,
R/o. Behind School No.8, Jameel Colony,
Amravati, Tq. & Dist. Amravati
2. Shubanaz P. A. Kadar,
aged about 57 years, Occupation :
Household work R/o. Sabanpura,
Amravati, Dist. Amravati
3. Riyaz Ahmad Rahim Khan,
aged about 50 years, Occu. Business,
R/o. Gulshan Nagar, Wanjari Layout,
Near Masji Nagpur, Dist. Nagpur

.. Appellants

Versus

Bashiroddin Shirojddin Khan (Dead)
Through legal heirs :

- 1) Fahmida Bashiruddin Khan, wife,
Aged about 57 years,
Occu. Household work,
- 2) Samir Bashiruddin Khan, son,
Aged about 37 years, Occu. Mining Work,
- 3) Faizal Bashiruddin Khan, son,
Aged about 35 years, Occu. Mining Work,
- 4) Rukhsana Bashiruddin Khan, Daughter
Aged 30years, Occu. Household work

All R/o C/o Rukhsana Bashiruddin Khan,
Behind Sangam Automobile, Z.P. Colony,
Wani, Tq. Wani, Dist. Yavatmal

.. Respondents

Mr. S. C. Bhalerao, Advocate for appellants.

Mr. Sameer Khan, Advocate h/f. Mr. Firdos Mirza, Advocate for respondent Nos.1 to 4.

CORAM : SMT. M. S. JAWALKAR, J.

DATED : 28/11/2022

ORAL JUDGMENT

Admit. Heard finally by the consent of the learned counsel appearing for the parties.

(2) Present applicants are challenging the order passed by the District Judge-1, Kelapur, District – Yavatmal in Misc. Application No.45 of 2016 decided on 04/08/2020 and the order passed on 04/11/2016 below Exh. 8 and 16 and the order dismissing the appeal in R.C.A. No. 84 of 2012.

(3) It appears that plaintiff filed application for bringing legal heirs of sole respondent, however, the date of death neither mentioned in the application, nor application was filed along with affidavit. In view thereof both the applications came to be rejected. The learned counsel for applicant submitted that the applicants are rustic people and it is a mistake of counsel that he had not taken due care to file application along with affidavit or to call the applicants for submitting the application along with affidavit.

(4) In view of Order 22 Rule 10-A of the Code of Civil Procedure (CPC), the application is required to be filed within 90 days. It was the duty of the pleader to communicate to Court about death of a party and upon such communication, the Court has to give notice of such death to the other party. In view of this specific provision, it appears that there was no intimation given either to the Court or to the other party. It is true that the date of death is not mentioned in the application, however, the learned trial Court, as well as the appellate Court failed to appreciate that in reply date of death was mentioned by the counsel for respondent.

(5) Learned counsel for the appellant relied upon the decision in the case of ***Rafiq and another vs. Munshilal and another*** ***AIR 1981 SC 1400***, wherein the Hon'ble Apex Court held as under :-

“3. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the Court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful.”

(6) Learned counsel for the appellant also relied upon the decision in the case of ***Vasant Jagannath Malkar-Teli & others vs. Parvati Ananda Phatak and Others, 2013(1) ALL MR 394***, wherein this Court rejected the application on the ground that there was no prayer for setting aside abatement. The Hon'ble Apex Court held that such order cannot be sustained on highly technical and pedantic approach, and such matters should be avoided.

(7) As against this, learned counsel for the respondent submitted that conduct of the party needs to be considered even first

appeal was filed belatedly and delay was condoned. The conduct has to be considered. He relied upon the decision in the case of *Balwant Singh (dead) vs. Jagdish Singh and others, (2010) 8 SCC 685*, wherein the Hon'ble Apex Court held that whenever law is enacted by the legislature, it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a statute, including every word, have to be given full effect, keeping the legislative intent in mind, in order to ensure that the projected object is achieved. The Court should not give such an interpretation to the provisions which would render the provision ineffective or odious. If the Court should take a very liberal approach and interpret these provisions in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all these provisions redundant and inoperative.

(8) The matter is distinguishable on facts when there was death of the appellant and the legal heirs were not taken on record within sufficient time. Here there is death of respondent and as per provision, the duty casted on the counsel for the party to intimate the death of a party to the Court and thereafter the Court has to bring to the notice of the same to other side.

(9) In my considered opinion, the applicants are rustic people. The death of the respondent ought to have bring to the notice of the Court or the counsel for the other side. However, it is also noted that counsel for applicant has not taken due care to file application along with details and supporting affidavit.

(10) The appeal is allowed, subject to costs of Rs.1000/- [Rs.One Thousand only] each payable to the respondents. The amount of costs to be deposited in the Court of District Judge-1, Kelapur, District – Yavatmal within **three weeks**.

(11) The order passed below Exh.8 and 16, as well as Misc.Application No.45 of 2016 are set aside. The applicants are granted permission to amend suitably the applications Exh.8 and 16 or to file fresh applications. After amendment or filing of fresh application liberty is granted to the other side to reply the same.

(12) The appellate Court is directed to decide the applications afresh.

[SMT. M. S. JAWALKAR]