

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

CIVIL APPLICATION (O) NO.295 OF 2022

WITH

CIVIL APPLICATION (F) NO.975 OF 2022

WITH

CIVIL APPLICATION (O) 296 OF 2022

WITH

WITH CIVIL APPLICATION (F) NO.976 OF 2022

WITH

CIVIL APPLICATION (O) NO.297 OF 2022

WITH

CIVIL APPLICATION (F) NO.977 OF 2022

{Meena W/o Wasudeo Pimple ..Vrs.. Shir Shashank S/o Wasudeo
Pimple and Ors}

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri K. B. Zinjarde, Advocate for the Applicants.

CORAM : ABHAY AHUJA, J.

DATE : 15th SEPTEMBER, 2022.

. Heard.

2. Shri Zinjarde, learned counsel appearing for the Applicant/Appellant would submit that the Appellant, who is the second wife of the deceased is aggrieved by grant of succession certificate in respect of family pension to the third wife of appellant's husband.

3. The learned counsel submits that being aggrieved and dissatisfied with the common judgment and decree dated 28.02.2020, passed by the Civil Judge Senior Division, Wardha in Succession Case No.25 of 2016 and Succession Case No.34 of 2016 respectively, by which the

application for grant of succession certificate in Case No.25 of 2016 filed by the Respondents No.3, 5 to 7 was granted and Application No.34 of 2016 filed by the Respondents No.1 and 2 was partly allowed, whereby her claim for grant of succession certificate and family pension of her deceased husband Shri Wasudeo Jagannath Pimple being rejected, the present appeal under Section 384 of the Indian Succession Act, 1925, is sought to be filed. Shri Zinjarde, learned counsel would submit that the Appellant is entitled to grant of 1/6th share in the pensionary benefits of the deceased Shri Wasudeo Jagannath Pimple, but the Civil Judge has erroneously rejected her claim for family pension holding that she was not a legally wedded wife of the deceased, but the Respondent No.3 was the legally wedded wife of the deceased Wasudeo. Learned counsel submits that the Appellant is also seeking the status of legally wedded wife as on 05.01.2002 Smt. Kundatai - first wife of the deceased died.

4. Learned counsel would further submit that there is a delay of 76 days in filing the above appeal and an application for condonation of delay viz. Civil Application No.478 of 2021 was filed in this Court and this Court was pleased to issue notice to the Respondents on 26.02.2021. The learned counsel submits that accordingly copies of the applications were submitted for effecting service of notice upon the Respondents. However, as per the process report, notice could not be served upon Respondent No.5 as she

was already dead. The learned counsel submits that upon obtaining the knowledge of this fact, the Appellant made enquiry about the date of the death of Respondent No.5 as well as the details of the said Respondent's legal representatives. It was found that the Respondent No.5 had died on 22.10.2018 i.e. prior to filing of the present appeal. It is submitted that in-fact the Respondent No.5 expired even prior to the delivery of the impugned judgment and during the pendency of the case in the Lower Court. Shri Zinjarde, learned counsel would submit that it was the duty of Respondents No.3, 6 and 7, who were Applicants in the Lower Court to inform about the death of Respondent No.5, who were also co-applicants with Respondent No.5. However, they failed to intimate the death of Respondent No.5 to the Lower Court.

5. It is submitted that although, the present appeal has been filed against Respondent No.5, who was already dead, the appeal has abated with respect to Respondent No.5 from the very date filing of the appeal as the Applicant obtained the knowledge of the death of Respondent No.5 only from the process report.

6. Learned counsel would submit that it was also the duty of Respondents No.3, 6 and 7, who were Applicants in the Lower Court to bring the legal representatives of Respondent No.5 on record. The learned counsel submits that if the legal representatives could have been brought on record in the Lower Court, the present appeal would have

been filed by including the legal representatives of Respondent No.5 as parties to this Appeal.

7. Learned counsel submits that the cause of action has accrued to the Appellant to bring the legal representatives of Respondent No.5 on record on the date of filing of the appeal i.e. on 31.08.2021. He therefore submits that there has been a delay of 589 day in bringing the legal representatives of Respondent No.5 on record, and therefore, the Applicant has filed an application for condonation of delay in filing the application for setting aside the abatement as well as for bringing the legal heirs of Respondent No.5 as stated in paragraph 11 of the application on record as Respondents No.5A1 and 5B to 5E. The learned counsel would submit that he has made one set of applications (Civil Applications No.295 of 2022, 296 of 2022 and 297 of 2022) in the application for condonation of delay in filing the appeal and the second set of applications (Civil Applications No.975 of 2022, 976 of 2022 and 977 of 2022) in the first appeal respectively.

8. None for the Respondents though served.

9. Having heard Shri Zinjarde, learned counsel for the Appellant and having perused the six applications, this Court is of the view that the delay of 589 days be condoned, the abatement with respect to Respondent No.5 be set aside and the legal heirs as stated in paragraph 11 of the application be brought on record in the Civil

Application No.478 of 2021 as well as in First Appeal (St.) No.7963 of 2020 as Respondents No.5A1 and 5B to 5E.

10. For the reasons stated in the applications, the applications are allowed and the applications accordingly stand disposed in terms of prayer Clause(s) therein.

11. Necessary amendments be carried out within a period of three weeks.

CIVIL APPLICATION (F) NO.478 OF 2021.

12. This is an application seeking condonation of delay of 111 days in filing the appeal against the judgment and decree dated 28.02.2020 passed by the Civil Judge Senior Division, Wardha, in Succession Case Nos.25 of 2016 and 34 of 2016 respectively.

13. Learned counsel for the Appellant draws the attention of this Court to paragraphs 1 to 3 of the application to explain the delay caused in filing the appeal.

14. None for the Respondents though served.

15. Having heard the learned counsel for the Applicant and having perused the application, this Court is satisfied that sufficient cause has been made out for condoning the delay of 111 days. The delay of 111 days in filing the appeal is hereby condoned. Registry to register the appeal within a period of four weeks. The application accordingly stands disposed.

FIRST APPEAL (ST) NO.7963 OF 2020.

16. Let the memo of appeal alongwith annexures be served upon the Respondents within a period of six weeks and an affidavit of service with tangible proof be filed in this Court by the next date.

17. List the appeal on **10.11.2022.**

(JUDGE)

TAMBE