

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

CIVIL APPLICATION (CAS) NO. 384 OF 2020
IN
SECOND APPEAL NO. 290 OF 2019

Sabihabai Ahesan Hussain and ors.

...VERSUS...

Shri Arun Narayanrao Keole 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 N.H.Shams, Advocate for appellants/applicants.

Shri Uday Changleh, Advocate h/f. Shri R.M.Vaidya, Advocate for respondent nos. 1 & 5 to 7.

Shri P.S.Borkar, Advocate h/f. Shri R.D.Wakode, Advocate for respondent nos. 8(a to f) & 9

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

DATE : 25th NOVEMBER, 2022

The applicant do not want to press this application. Hence, this application is disposed of as not pressed.

CIVIL APPLICATION (CAS) NO. 584/2019 AND 585/2019

The present applications are filed for setting aside abatement, condonation of delay in filing application for bringing the legal heirs of appellant no. 3 and for bringing the legal heirs of appellant no. 3 on record.

2. It appears that appellant no. 3 died during the pendency of First Appeal itself but it was not brought to the notice of the counsel. The learned counsel appearing for the respondent nos. 8 (a to f) and 9 has no objection for taking the names of legal heirs of appellant no. 3 on record.

3. In spite of service, the other respondents are absent. In view of thereof, the present applications are allowed. Delay is hereby condoned, abatement is set aside and the applicants are permitted to bring on record the legal heirs of appellant no. 3 as the right to sue survives. Necessary amendment to be carried out in the appeal as well as pending civil applications, within one week. Accordingly, the applications are disposed of.

CIVIL APPLICATION (CAS) NO. 382/2020 AND 383/2020

The present applications are filed for setting aside abatement, condonation of delay in filing application for bringing legal heirs of respondent no. 2 and for bringing the legal heirs of respondent no. 2 on record.

2. In spite of service, none appears for proposed legal heirs of respondent no. 2. The delay in filing the applications for setting aside abatement as well as for bringing the legal heirs of respondent no. 2 on record is caused as the counsel was not aware about the death of respondent no. 2. When it came to the knowledge of counsel, the matter was listed before Registry, High Court for taking suitable steps. In view of the above reason, I am satisfied that there is bonafide and justifiable reason for not taking steps for setting aside abatement within limitation. As such, the applications are allowed. Delay is hereby condoned, abatement is set aside, permission is granted to the appellant to bring on record the legal heirs of respondent no. 2.

3. Necessary amendment to be carried out within a week. Accordingly, the applications are disposed of.

4. After amendment is carried out, issue notice to the proposed legal heirs of respondent no. 2, returnable within three week.

(Smt. M.S. Jawalkar, J.)

B.T.Khapekar