

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1215 OF 2023

~~Ganpati Shripati Gurav~~

(since deceased) through Legal Heirs

Anil Ganpati Gurav & Ors.

.. Petitioners

Versus

Akkatai Ramchandra Gurva & Ors.

.. Respondents

-
- Mr. Prasad B. Kulkarni for Petitioners
 - Mr. Rakesh S. Patil for Respondents
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 10, 2023

P.C.:

1. Heard Mr. Kulkarni, learned Advocate for Petitioners and Mr. Patil, learned Advocate for Respondents.

2. The present Writ Petition takes exception to the order dated 04.01.2023 passed in Civil Misc. Application No. 148 of 2019 filed by the Petitioners (Applicants therein) seeking restoration of Civil Appeal No. 285 of 2015. Admittedly, the said order is an ex parte order. That apart, perusal of the impugned order reveals that the learned Court has overreached its jurisdiction in adjudicating substantive findings with respect to the *lis* between the parties while deciding and disposing of the Application seeking restoration of the dismissed Appeal.

3. After hearing the Petitioners on 03.02.2023, this Court had made certain observations in paragraph No. 4 of the said order to which Mr. Patil, learned Advocate for Respondents had sought time to file his reply. The affidavit-in-reply dated 06.02.2023 has been filed by the contesting Respondents and it is contended that Civil Misc. Application No. 148 of 2019 was filed at a much belated stage despite serious lapses on the part of the Petitioners. He would contend that after the death of Appellant No. 1 and / or the death of his eldest son thereafter, the Appellants failed to take steps for a substantial period of time and it is only thereafter they filed three specific Applications seeking condonation of delay being Applications below Exh. Nos. 19, 20 and 21 for condonation of delay, setting aside abatement and bringing the legal heirs on record. He would submit that the above Applications were allowed vide orders dated 13.03.2018, 23.11.2018 and 03.12.2018 but even thereafter, the Appellants failed to carry out necessary amendment in the Appeal Memo and comply with the order. Thereafter, the Appellants filed pursis below Exh. 23 but despite that they failed to bring on record their legal heirs. Hence he would contend that the conduct of the Petitioners (Applicants therein) of not complying with the orders passed by the Court and not taking steps within the reasonable time needs to be observed seriously by this Court.

4. Be that as it may, despite the above, it is seen that the learned Appellate Court has in fact while passing the impugned order virtually adjudicated the *lis* between the parties and given substantive findings. There is no doubt that pursuant to the dismissal order, there has been delay of almost 2 years in filing the restoration application and even after passing of the orders by the learned Court, steps were not taken within reasonable time. It also needs to be mentioned that pursuant to the year 2019, there is possibility that due to the Covid-19 pandemic issue, the Appellants may have failed to take the necessary steps. Undoubtedly, the Appellants cannot be ousted because of the reasons stated in the impugned order.

5. In view of the above observations and findings, the impugned order dated 04.01.2023 is quashed and set aside subject to payment of costs of Rs. 25,000/- by the Petitioners to the Kirtikar Law Library, High Court, Mumbai. The costs shall be paid within a period of three weeks from today and receipt of the same shall be produced on record. If the costs are paid, Misc. Civil Application No. 148 of 2019 stands allowed and Regular Civil Appeal No. 285 of 2015 be restored to file.

6. With the above directions, Writ Petition is disposed. However, it be placed on board on **3rd March, 2023** for compliance.

[MILIND N. JADHAV, J.]