

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 800 OF 2023

~~Balu Jairam Tambe~~

(since deceased) through his legal heirs

Dnyaneshwar Balu Tambe & Ors.

.. Petitioners

Versus

Dasharath @ Nivrutti Dhondu Tambe & Ors.

.. Respondents

-
• Ms. Pallavi N. Dabholkar for Petitioners
.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 23, 2023

P.C.:

- 1.** Heard Ms. Dabholkar, learned Advocate for Petitioner.
- 2.** Leave to amend granted to include the relief of setting aside abatement of the proceedings before the learned Trial Court. Amendment to be carried out forthwith. Re-verification is dispensed with.
- 3.** Perused the impugned order dated 14.09.2022 passed by the learned Civil Judge, Senior Division, Nashik below Exhs. 50 and 52. Exh. 50 has been filed for seeking condonation of delay of 7 months in filing the Application for bringing the legal heirs of deceased Defendant No. 2 on record whereas Exh. 52 has been filed for bringing the legal heirs of deceased Defendant No. 2 on record. Learned Trial Court after hearing the parties has rejected both the Applications. The reason assigned for rejecting Application below Exh. 50 is that the

party would have to explain each and every day's delay and in that view of the matter, since delay of each and every day has not been explained, the said Application has been rejected.

4. I have perused the Application for seeking condonation of delay. It is the case of the Petitioners that though they were informed about the demise of Defendant No. 2, the details of legal heirs were not provided to them and that is the precise reason for the delay.

5. In view of the decision of the Supreme Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors.**¹ and more particularly the guidelines stated in paragraph 21 thereof after analyzing the law relating to condonation of delay till then and further additional guidelines laid down in paragraph No. 22 of the said decision, I am of the opinion that the impugned order passed below Exh. 50 deserves to be set aside. Accordingly, the said order is set aside and the Application seeking condonation of delay stands allowed.

6. In view of the above and the setting aside of the order below Exh. 50, the Application below Exh. 52 filed by the Petitioner before the learned Trial Court to bring on record legal heirs of deceased Defendant NO. 2 also stands allowed.

7. In view of the above observations and findings, the

¹ (2013) 12 SCC 649

impugned order dated 14.09.2022 stands quashed and set aside.

Petition stands allowed in terms of prayer clauses (b) and (c) which reads thus:-

“(b) Applications at Exhibit 50 & Exhibit 52 in Special Civil Suit No. 371/2014 being “Exhibit E” to the present Writ Petition, be allowed;

(c) The Petitioners be allowed to bring legal heirs of deceased Respondent No. 2 on record by amending the cause title of the Petition & Plaint and set aside abatement of the suit proceedings, if any.”

7.1. It is clarified that the observations qua abatement of the suit proceedings made by the learned Trial Court in the impugned order are also set aside by virtue of this order.

8. Writ Petition is disposed.

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR
Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2023.01.24
15:29:16
+0530