

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

CIVIL APPLICATION (CAF) NO.405 OF 2023
IN
FIRST APPEAL NO.20 OF 2017

Gopikisan Asaram Chandak (Dead) through L.Rs. 1) Shantabai wd/o Gopikisan
Chandak and others

Vs.

The State of Maharashtra Through Collector, Wardha and others

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

Court's or Judge's orders

Mr. V. S. Kukday, Advocate for appellants/applicants.

Ms. T. Udeshi, AGP for respondent Nos.1 and 2.

Ms. Anjali Agrawal, Advocate h/f Ms. A. S. Athalye, Advocate for respondent No.3.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 14/02/2023

1. By this application, the applicants are seeking condonation of delay which is caused in bringing the legal heirs on record. As per the contention of the applicants, they are the legal heirs of Shri Gopikisan Chandak who had filed present appeal challenging the judgment and award passed by the Joint Civil Judge Senior Division, Wardha. During the pendency of appeal, original applicant Shri Gopikisan Chandak expired at Arvi on 14.07.2012. Initially, the applicants were not aware about the pendency of the present appeal before this Court. After they got the knowledge, they approached to the Counsel and they also approached to the Court for obtaining legal heir

certificate. In the process of obtaining the legal heir certificate time was consumed, and therefore they could not file an application within time for bringing themselves on record, therefore delay is caused. The said delay is not intentional one. There is justifiable reason for condonation of delay and prayed for condonation of delay.

2. The said application is opposed by Ms. Agrawal, learned Advocate holding for Ms. Athalye, learned Advocate for the respondent No.3, on the ground that delay is not properly explained and hence application deserves to be rejected.

3. Heard Mr. V. S. Kukday, learned Advocate for the applicants, Ms. Agrawal, learned Advocate for the respondent No.3 and Ms. T. Udeshi, learned AGP for respondent Nos.1 and 2.

4. Perused the application. It is apparent that initially, the original claimant alone was looking after the appeal, and therefore there is possibility that the applicants were not knowing about the pendency of the appeal. After the death of original applicant, they have obtained the legal heir certificate from the Court. So, time was consumed in following the legal process. Thus, there is just and reasonable cause for condonation of delay. In view of that delay of 69 days is condoned on the waiver of the interest, if the amount is enhanced by

the Appellate Court.

5. Civil Application is disposed of.

Civil Application (CAF) No.406 of 2023

1. By this application applicants are seeking setting aside the abatement order. As per the contention of the applicants, only Gopikisan Chandak was the applicant and he was looking after the entire proceeding. Therefore, they were not aware about the said proceedings. For the above said reason, they have not approached to the Court for bringing themselves on record. They are legal heirs of Gopikisan Chandak, who expired on 14.07.2022.

2. The said application is opposed by the learned AGP for the respondent Nos.1 and 2 as well as learned Advocate for respondent No.3.

3. Perused the application and the reason mentioned therein which appears to be justifiable one. In view of that abatement order is set aside.

4. Civil Application is disposed of.

Civil Application (CAF) No.407 of 2023

1. Proposed legal heirs have filed this

application for adding them as appellants, due to the death of the original appellant. As they are the legal heirs of the original appellant namely Gopikisan Chandak. In view of the reasons mentioned in the application, they are permitted to substitute their names in place of original appellant.

2. Amendment be carried out accordingly within stipulated period.

3. Civil Application is disposed of.

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Stand over after three weeks.

(URMILA JOSHI-PHALKE, J.)

Sarkate