

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CIVIL APPLICATION (CAF) NO. 198/2023 IN
FIRST APPEAL NO. 1124/2009

Madhukar S/O Pundalik Gawhale And 4 Ors
Vs
State Of Mah. Thr. Collector, Buldhana And Anr

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr A.P. Sadavarte, counsel for the applicants/appellants.
Mr M.A. Kadu, AGP for the respondent Nos. 1 and 2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 31/03/2023.

1. Heard.
2. Present application is filed for condonation of delay which is caused in filing the application for setting aside an abatement order and bringing the legal heirs on record.
3. Appellant No.2 died on 05/11/2011 at Akshay Medical Hospital, Lonawada, Tq. Mawad, District Pune. A copy of the death certificate is filed along with this application.
4. As per the contention of the proposed legal heirs, they were not aware about the pendency of the aforesaid first appeal before this Court till 07/01/2023, and therefore, they have not brought themselves on record. Therefore, 3936 days delay is caused in preferring the application.
5. As per the contention of the applicants, after the death of appellant No.2, they applied for death certificate as well as for legal heirs certificate. Thereafter, they approached

this Court. As the proposed legal heirs hence were not aware about the pendency of the litigation. They could not approach to the Court.

6. The said application is strongly opposed by Mr M.A. Kadu, learned AGP for the State on the ground that, the inordinate delay is caused in bringing the legal heirs on record. The other appellants are the real brothers of appellant No.2. they have not informed this Court about the death of appellant No.2.

7. Admittedly, they were aware about the pendency of the appeal before this Court. In view of that delay be condoned, subject to the waiver of the interest.

8. Mr Sadavarte, learned counsel for the appellant submitted why the other appellant should suffer for the fault of the legal heirs of appellant No.2 and opposed for the waiver of the interest.

9. Heard both the sides. Perused the application.

10. The appellant No.2 Prabhakar Pundlik Gawhale died long back in the year 2011 i.e. on 05/11/2011 more than 10 years have been passed. The other appellants are the real brothers of the appellant No.2. Admittedly, they were about the death of appellant No.2 as well as the pendency of this litigation. It is apparent that other appellants were not diligent in informing the Court as well as informing the counsel about the death of appellant No.2.

11. In the above circumstances, the state cannot be saddled with the responsibility of paying the interest i.e. also at the rate of 15% which is excessive and exorbitant one.

12. In view of that, it will be in the interest of justice to condone the delay, subject to the waiver of the interest 3936 days which is caused in bringing the legal heirs on record. In view of that, the delay is condoned, subject to the condition that the appellant shall not claim the interest for this 3936 days in setting aside the abatement order.

Civil application is disposed of.

Civil Application (CAF) No. 199/2023

In view of the reasons mentioned in the application, the application is allowed.

The applicant is permitted to bring the legal representatives on record.

Civil application is disposed of.

Civil Application (CAF) No. 200/2023

As per the reason mentioned in the application, the proposed legal heirs were not aware about the pendency of this litigation.

Considering the same, they are permitted to add themselves as a party.

Civil application is disposed of.

JUDGE