

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

WRIT PETITION NO.731/2023

Vipin s/o Ravindra Madan

...Versus...

Raju s/o Kisanlal Banode

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

Court's or Judge's orders

Shri R.R. Srivastava, Advocate for petitioner
Shri S.M. Patrikar, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.

DATE : 21/02/2023

1. Heard Shri R.R. Srivastava, learned counsel for the petitioner and Shri S.M. Patrikar, learned counsel for the respondent.

2. The petition challenges the order dated 18/01/2023 passed below Ehx.1 in Misc. Civil Application No.175/2021 rejecting the same. It is contended that though the counsel was intimated on 19/09/2016 about the demise of the original appellant on 15/08/2016, no steps were taken to bring the legal representatives of the deceased appellant on record, though the counsel was aware about the legal representatives, since the present petitioner was in touch with the counsel. The communication dated 01/02/2023 addressed

to the counsel in that regard has been also sent to the Bar Council of Maharashtra and Goa (pg.16 of Civil Application No.350/2023). It is submitted that on the above ground the legal representatives were not brought on record, as a result of which, Regular Civil Appeal No.67/2016 was disposed of on account of abatement on 24/02/2021. In order to set aside the aforesaid abatement, Misc. Civil Application No.175/2021 was filed, which has been rejected by the impugned order. It is submitted that on account of default on part of the counsel to take appropriate steps in spite of the knowledge regarding the demise of the original appellant, the petitioner should not suffer. He submits that any inconvenience, which may be caused to the respondent, can always be compensated in terms of money and to show his *bona fides*, the petitioner has already deposited an amount of Rs.50,000/- in this Court by Demand Draft No.933320, dated 04/02/2023.

3. Shri Patrikar, learned counsel for the respondent, in opposition, contends that there is no sufficient cause for setting the abatement and supports the impugned order.

4. The communication dated 01/02/2023 (pg.16 in Civil Application No.350/2023), paints a very sordid picture regarding the conduct of the matter by the counsel. Much can be said about it, however, since the complaint has already been sent to the Bar Council of Maharashtra and Goa, I prefer not to comment upon it, as any comment made herein would

obviously prejudice the proceedings, which may be initiated in that regard. Suffice it to say that considering the knowledge attributed, to the counsel regarding the demise of the original appellant, the appropriate steps ought to have been taken, failure in doing which, prejudices the petitioner in affording an opportunity to put forth his case in appeal.

5. Misc. Civil Application No.175/2021 which is filed by the petitioner indicates the above position of information available with the counsel. In fact, in Regular Civil Appeal No.67/2016 an application had been filed below Exh.8 on 19/09/2016, which indicated the demise of the original appellant as well as the present petitioner, being his son, being in possession of the property and looking after the business, which was under the signature of the then counsel, which according to Shri Srivastava, learned counsel for the petitioner, was accompanied with the death certificate of the deceased/original appellant, in spite of which, no steps were taken, in view of which, it is apparent that though the necessary information was available, the appeal has abated on account of inaction on part of the counsel. In such a state of affairs, it would be appropriate, if an opportunity is granted to the petitioner to contest the appeal on merits. Any prejudice, which may be caused to the respondent on account of delay, can always be compensated.

6. Shri Patrikar, learned counsel for the respondent is agreeable for the appeal to be decided within a period of two months from today, accepting which statement, the impugned order dated 18/01/2023 is hereby quashed and set aside. Misc. Civil Application No.175/2021 is allowed. The order of abatement of appeal is set aside and the appeal is restored to file with a further direction that the appeal shall be decided by the learned Appellate Court within a period of two months from today. The parties shall appear before the learned Appellate Court on 24/02/2023 and shall place the order of this Court before the learned Appellate Court to apprise it of the same.

7. Shri Patrikar, learned counsel for the respondent has no objection, if the legal representatives of the deceased/appellant are brought on record by filing an application by the petitioner, which shall be done on 24/02/2023 itself. The costs of Rs.50,000/- deposited in this court shall be paid over to the respondent.

8. The writ petition is accordingly allowed in the above terms with no order as to costs.

(AVINASH G. GHAROTE, J.)