

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

CIVIL APPLICATION (CAS) NO.236/2023
IN
SECOND APPEAL NO.56/2006

Mohanlal Kamraj Gupta

Vs.

Kashiram Noharlal Gupta(dead) thr. LR's Shobhavati wd/o Kashiram Gupta and
 others

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

Court's or Judge's orders

 Shri G.P. Naphade, Advocate for appellant
 Dr. R.S. Sirpurkar, Advocate for respondent Nos.1(A) to 1(H)

CORAM : SMT. M.S. JAWALKAR, J.
DATED : 05/10/2023

The present application is filed for condonation of delay in filing application for bringing legal representatives of respondent No.2 on record. It appears that one of legal representatives of respondent No.1 filed pursis on 31/08/2018 on record stating therein that the original respondent No.2 expired on 08/08/2008. It is submitted that this fact was not known to the appellant earlier. Thus, from the date of knowledge, the legal representatives of respondent No.2 ought to have been brought on record within 90 days. But for want of sufficient information/instruction, it could not be done immediately.

2. The learned Counsel for appellant had applied for early hearing mentioning names of all the legal representatives of respondent Nos.1 and 2.

However, he could not served the copy of application and appeal memo. This is the reasons given for delay in filing application.

3. The learned Counsel for respondents vehemently opposed the application and brought to the notice of this Court that vide pursis dated 31/08/2018, not only the information about the death of respondent No.2 is given but also names of legal representatives were also placed on record. As such, the reasons put-forth is not justifiable.

4. I have heard both the parties. The reasons though not sufficient to condone the delay, however, in the interest of justice and in view of the fact that the right to sue survive, there is no separate decree can be passed as respondents are the co-owners of the suit property. As such, application is allowed subject to costs of Rs.10,000/- to be paid to the respondents within the period of four weeks.

5. The application stands disposed of accordingly.

CIVIL APPLICATION (CAS) NO.235/2023

1. The present application is filed for setting aside abatement. As there was delay in filing application for setting aside abatement, the said delay has been condoned subject to costs.

2. As right to sue survives, though application is opposed by learned Counsel for respondents, the

application is allowed.

3. The abatement is set aside.

4. The application stands disposed of accordingly.

CIVIL APPLICATION (CAS) NO.237/2023

1. The present application is filed for bringing legal representatives of respondent No.2. Abatement is set aside by condoning the delay. As right to sue survives, the application is allowed.

2. The applicant/appellant is permitted to bring on record the legal representatives of respondent No.2.

3. Necessary amendment to be carried out within a period of four weeks subject to payment of costs as directed in Civil Application (CAS) No.236/2023.

4. The application stands disposed of accordingly.

SECOND APPEAL NO.56/2006

List the matter for final hearing in the week commencing from 06/11/2023.

JUDGE

R.S. Sahare