



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

CIVIL APPLICATION (CAS) NO.723/2022
WITH
CIVIL APPLICATION (CAS) NO.724/2022
IN
SECOND APPEAL NO.48/2005 (D)

Chandrakala Kamalsingh Thakur and ors.

Vs.

Ruplal Devidin Banode (dead) thr. LR's Chanda R. Banode and ors.

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

Court's or Judge's orders

Shri R.D. Dhande, Advocate for respondent Nos.1(a) to 1(e)

CORAM : SMT. M.S. JAWALKAR, J.
DATED : 08/09/2023

It appears that notice issued to appellant Nos.1 and 4 on Civil Applications, received back unserved.

2. Shri R.R. Prajapati, learned Advocate appears for appellant Nos.1 and 3. Learned AGP appears for respondent No.2. It appears that permission was granted to serve appellant Nos.2 and 4 by paper publication. The notice was served by paper publication. In spite of service, none appears for appellant Nos.2 and 4.

3. It is submitted that a false statement is made that there are no legal representatives of respondent No.1. The appeal came to be disposed of by holding that Special Civil Suit No.327/1977 has abated.

4. The learned Counsel for applicants informs

that the respondent No.1 in Second Appeal though expired, he was married and having legal representatives. Those are the applicants in the present matter. In spite of service, none for the appellants.

5. For the reasons stated in paragraph Nos.2 and 3, I am satisfied that there is justifiable ground for not approaching to this Court for restoration of Second Appeal. Accordingly, the delay in filing setting aside abatement is hereby condoned.

6. It also appears that the affidavit was filed in Special Darkhast No.6/2005 on 16/07/2015 for taking their names on record. However, it is submitted that the said application was also not filed by the Counsel appearing on their behalf. As such, they were not having any knowledge of passing of the order on 24/09/2018. In the Second Appeal on the false statement made by the appellants that respondent No.1 died without leaving any legal representatives, this Court passed the impugned order, holding that Special Civil Suit No.327/1977 has abated.

7. In view of this submission, I am satisfied that there is case made out by learned Counsel for applicants to recall the order passed on 24/09/2018 by this Court in Second Appeal No.48/2005. Accordingly, order dated 24/09/2018 is hereby recalled.

8. As such delay in filing application for setting

aside abatement for substitution of legal representatives of respondent No.1 is hereby condoned.

9. The Registry is directed to restore the Second Appeal on its original number.

10. After restoration of the same, issue notice to the appellants and respondent No.2, returnable within three weeks.

11. The application is disposed of.

JUDGE

R.S. Sahare