



THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAS) NOS. 1007/2023, 1006/2023 & 1008/2023
IN
SECOND APPEAL NO. 149 OF 2007(D)

SMT. RAMKALIBAI WD/O. RAMBHAU KACCHAWA

...VERSUS...

RAMPRASAD S/O. NAGOJI SURYAWANSHI

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

Court's or Judge's order

Shri M.B.Naidu, Advocate for applicants.

Shri M.R.Joharapurkar, Advocate for respondents.

CORAM : SMT. M. S. JAWALKAR,J.

DATE : 03rd OCTOBER, 2023

The Civil Application (CAS) No. 1007/2023 is filed for condonation of delay in filing the application for bringing the legal heirs of deceased appellant on record.

2. The applicants are legal heirs of the sole appellant. The appellant has expired on 17/09/2021 at Mahadula, Nagpur. When the mutation proceedings were initiated and the purchaser Deepak Sarode, in whose favour the Power of Attorney holder had executed the registered sale deed, approached applicant nos. 5 and 6 about 10 days before, and on his information, the applicants for the first time, came to know that their mother Smt. Ramkalibai had executed the Power of Attorney in favour of Prakash Kambhale who had executed the registered sale deed in his (purchaser) favour suppressing the fact of pendency of present Second Appeal.

3. The present applicants for the first time came to know about filing of present litigation on or about 02/07/2023. Prior to that, the applicants had absolutely no knowledge about filing of suit or pendency of appeal. Thus, there was no occasion for the applicants to make any enquiry into the matter. As such, there is delay of 569 days in filing the application for bringing the names of legal heirs of deceased appellant.

4. The application is vehemently opposed by the learned counsel for respondents and it is submitted that the property was sold during the pendency of appeal. As such, it is prayed that the delay in filing application cannot be condoned.

5. Considering the reasons stated in the application, I am satisfied that there is sufficient cause for not filing the applications for bringing the legal heirs of sole appellant on record and for setting aside abatement. However, for the inconvenience caused to the respondents, the application is allowed, subject to costs of Rs. 2,000/- to be paid to the respondents within a period of three weeks.

6. Accordingly, the application stands disposed of.

CIVIL APPLICATION (CAS) NO. 1006 OF 2023

The present application is filed for setting aside abatement.

2. For the reasons stated in the application, the application is allowed. As the right to survives, the abatement is set aside.

3. Accordingly, the application stands disposed of.

CIVIL APPLICATION (CAS) NO. 1008 OF 2023

The present application is filed for bringing the names of legal heirs of deceased appellant - Smt. Ramkalibai.

2. For the reasons stated in the application, the application is allowed. The applicants are permitted to substitute their names in place of the appellant.

3. Necessary amendment to be carried out within a period of three weeks.

4. Accordingly, the application stands disposed of.

5. After amendment is carried out, the legal heirs of the appellant to carry out the amendment in respect of deceased respondent by bringing the legal heirs of the respondent on record.

(Smt. M.S. Jawalkar, J.)

B.T.Khapekar