

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

CIVIL APPLICATION (CAO) NO. 801 OF 2022

AND

CIVIL APPLICATION (CAO) NO.802 OF 2022

IN

MISC. CIVIL APPLICATION ST. NO. 1150 OF 2022

IN

SECOND APPEAL NO.53 OF 2013(D)

(DILIP MORESHWAR WASAMWAR..VS.. AMARSINGH GURUDIPSINGH (DEAD) THR. LRS & OTH.)

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

Court's or Judge's orders

 Shri A.K.Waghmare, Advocate for Applicant/Appellant.
 Shri S.M.Puranik, Adv. a/w Ms Sejal Lakhani, Adv. for Resp. No.1(a) & 1(b).
 Shri S.S.Dhengale, Advocate for Respondent Nos.5(1), 5(2) & 5(4).
 Shri N.G.Solao, Advocate for Respondent No.6.
 Shri Akshay Naik a/w Shri Y.N.Sambre, Adv. for Resp. Nos.3A to 3I.

CORAM : ANIL S. KILOR, J.

DATED : APRIL 20, 2023.

1. Heard.
2. This is an application filed for setting aside abatement and condonation of delay caused in moving application for bringing Legal Representatives (LRs) of respondent No.6 on record.
3. Shri Waghmare, learned counsel for the applicant submits that the respondent No.6 was resident of Himachal Pradesh and the applicant had no knowledge about the death of the respondent No.6 and recently when he got the knowledge about the death of the respondent No.6 from the respondent No.7(1) to 7(3), he filed application for setting aside abatement along with

application for condonation of delay as there is delay of 3040 days. He submits that only for the reason that he had no knowledge about the death of the respondent No.6 no application for bringing LRs could be filed within limitation. Accordingly, he prays for condonation of the said delay.

4. Shri Puranik, learned counsel for the respondent Nos.1(a) and 1(b) strongly opposed the application on the ground that there is inordinate delay and as the parties are in relation it is the submission of the learned counsel for the respondent Nos. 1(a) and 1(b) that the applicant had knowledge about the death of the respondent No.6.

5. The remaining respondents reiterate the submission of Shri Puranik learned counsel for the respondent Nos. 1(a) and 1(b).

6. Nothing has been brought on record by the respondents to show that the applicant had knowledge about the death of the respondent No.6 and despite the knowledge the application was not moved within time limit. In absence of any such material brought on record, I am of the opinion that sufficient cause has been shown by the applicant for condonation of delay.

7. No doubt, that the delay is inordinate,

however, considering the reasons cited by the applicant for condonation of delay and further for the reason that no prejudice would be caused to any of the respondents if the delay caused in filing the application for bringing LRs is condoned, I pass the following order:

The application is allowed. The abatement is set aside. The delay caused in filing application for bringing Legal Representatives of respondent No.6 on record, is condoned.

The Civil Application is **disposed of** accordingly. No costs.

CIVIL APPLN NO.802/2022

9. For the reasons stated in the application, the application is allowed.

10. The necessary amendment be carried out within two weeks from today.

The Civil Application is **disposed of** accordingly.

JUDGE

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