

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

WRIT PETITION (WP) NO.296 of 2020

Harekrushna Shrikrushna Bijwe,
aged about 50 years, Occu; Agri. &
Business, R/o Near Nilkanth Mandir,
Budhwara, Amravati, Tq. & Dist.
Amravati.

.... Petitioner

// VERSUS //

1. Smt. Suman Anil Barde,
Aged about – Adult, Occu. Household
work
2. Amit Anil Barde,
Aged about 35 years, Occu. Business.
3. Prafulla Anil Barde,
Aged about 33 years. Occu. Business.
4. Nivrutti Anil Barde,
Aged about 31 Years, Occu. Business.
5. Sau. Vandana Dipak Sonar
Aged about 29 years,
Occu. Household work,
All No.1 to 5 R/o Shubham Colony Near
Gadgadeshwar Mandir,
Amravati, Tq. & Dist. Amravati.
6. Shivdas Bakaram Barde,
Aged about 51 Years,
Occu. Agriculturist,
R/o Anand Nagar, Amravati,
Tq. & Dist. Amravati.
7. Mohd. Iqbal Sk. Mehboob,
Aged about 38 years, Occu. Agriculturist.
8. Nafisa Saddam @ Sadaf Mo.Iqbal Sk.

Mehboob,
Aged about 26 years,
Occu. Householdwork & Agri.
No.7 & 8 R/o Bhatkuli, Tq. Bhatkuli,
Dist. Amravati.

... Respondent(s)

Shri D.S. Joshi, Advocate for the Petitioner
Shri R.D. Wakode, Advocate for the respondent Nos.1 to 5

CORAM : ANIL S. KILOR, J.
DATED : 01.02.2023

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.
3. In this writ petition, the order below Exh.67 dated 26.08.2019, rejecting the application under Order XXII Rule 4 of the Code of Civil Procedure and order below Exh.80 dated 26.08.2019, rejecting the application for setting aside abatement and thereby condoning delay in bringing legal heirs of deceased defendant no.1 on record, passed by the 3rd Jt. Civil Judge Senior Division, Amravati in Special Civil Suit No.185 of 2012, are under challenge.

4. From the record, it is evident that the defendant No. 1 died on 26.12.2017 and a pursis was filed in the suit on 06.07.2018 and the application for bringing legal heirs on record by setting aside abatement and condonation of delay was filed on 18.07.2018. However, in Revenue Proceeding filed between the same parties, before the Sub-Divisional Officer (SDO), Tiwasa on 05.02.2018 when the petitioner was himself present, the notices were issued by the SDO to the legal representatives of the defendant No.1 and as such it is a submission of the learned counsel for the respondent that the petitioner had got knowledge about the death of the defendant No.1 on 05.02.2018 despite the same, within limitation, no steps were taken and therefore, the learned trial Court rejected the applications Exh.67 Exh.80.

5. The learned counsel for the petitioner, however, submits that the delay is not inordinate and there was no *mala fide* intention and the application was moved within time period. It is submitted that for the end of justice, it is necessary that the legal heirs of defendant No.1 should be brought on record.

6. The learned trial Court while rejecting the applications Exh.67 and Exh.80 has emphasized on a fact that though the petitioner got a

knowledge in the month of February 2018, he has pleaded ignorance of the fact of death of defendant No.1 and tried to take an advantage of the pursis filed in the month of July, 2018, for filing application for setting aside abatement and for condoning the delay in bring legal heirs on record.

7. From dates herein above recorded, even if the date of knowledge of the petitioner is taken as February, 2018, the delay in filing the application cannot be termed as inordinate delay and in absence of any *mala fide* intention of the petitioner, to file the applications at a belated stage, I am of the opinion that the rejection of the same is erroneous. Accordingly, I pass the following order:

(i) The writ petition is **allowed**.

(ii) The orders below Exh.67 and Exh.80, dated 26.08.2019, passed by 3rd Jt. Civil Judge Senior Division, Amravati in Special Civil Suit No.185 of 2012, are hereby quashed and set aside.

(iii) The applications Exh.67 and Exh.80 are allowed. Considering the time period lapsed because of the mistake on the part of the petitioner, the petitioner shall pay costs of Rs.2000/- to each of the legal heirs of defendant No.1.

Rule Accordingly. No costs.

[ANIL S. KILOR, J.]