

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8946 OF 2022
WITH
INTERIM APPLICATION NO. 915 OF 2023

Arun Ramchandra Ghongade

.. Petitioner

Versus

Laxman Vitthal Ghongade
(since deceased) through Legal Heirs
Gangubai Laxman Ghongade & Ors.

.. Respondents

.....

- Mr. Pradeep S. Gole for Petitioner
- Mr. Shriram Choudhari a/w Mr. Vaibhav Gaikwad for Respondents

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 22, 2024

P. C.:

INTERIM APPLICATION NO. 915 OF 2023 :

1. Heard Mr. Gole, learned Advocate for Petitioner and Mr. Choudhari, learned Advocate for Respondents.

2. Present Interim Application is filed for bringing legal heirs of deceased Respondent No. 1 on record who expired on 14.10.2022. Names and details of the legal heirs of deceased Respondent No. 1 are given in cause title of the Application.

3. Perused the Interim Application. For the reasons stated therein, Interim Application is allowed in terms of prayer clauses (a) and (b). Amendment to be carried out forthwith. Re-verification stands dispensed with. Interim Application is disposed.

WRIT PETITION NO. 8946 OF 2022:

4. Present Writ Petition takes exception to the order dated 15.01.2022 passed by the learned District Court in Civil M.A. No. 68 of 2021. By virtue of the said order, statutory Regular Civil Appeal filed by Petitioner (Appellant therein) stands dismissed for non-compliance, rather non-payment of paper book charges. Admittedly there is delay of 2 years and 8 months upto the date of beginning of the Covid 19 pandemic i.e. upto 15.03.2020 after which the period of limitation got arrested upto 20.01.2021 in the present case, when the Application for setting aside of the said order came to be filed. That Application below Exh. 1 was rejected by the District Court by order dated 15.01.2022 which is at Exh. J, page Nos. 86-91 of the Petition.

5. Mr. Gole has drawn my attention to the Application seeking condonation of delay which is at Exh. I, page Nos. 75-79 of the Petition and more specifically to the grounds stated in paragraph Nos. 4 to 7 of the said Application. I have perused the said grounds and I find that substantive and adequate reasons for the delay have been stated therein. The issue before the Court was regarding non-compliance of order directing payment of paper book charges and it is the case of Petitioner that after receiving the certified copy and filing the statutory Appeal, there was miscommunication with the Advocate for Petitioner who was handling the matter on all dates. Petitioner

was hence not informed about payment of paper book charges by his Advocate and therefore the delay. It is seen that there was actual delay of more than two years. Thereafter Covid 19 pandemic set in but immediately after the first wave of Covid 19 pandemic, Petitioner filed the Application seeking condonation of delay and prosecuted the same.

6. Mr. Choudhari in his reply to Mr. Gole would submit that the delay is not properly explained in the Applicant but I beg to defer with his submissions. On reading Application below Exh. 1, it is seen that the delay has been adequately explained. Hence for the reasons mentioned in the order dated 21.07.2017, a valuable statutory right of appeal of the Petitioner / Appellant cannot be taken away. However due to delay, allowing the present Petition certainly is not unconditional.

7. In view of the reasons mentioned in the Application dated 20.10.2021, I am inclined to accept the said reasons and allow the Application subject to payment of costs of Rs. 10,000/- to be paid by the Petitioner to the Kirtikar Law Library, High Court, Mumbai within a period of two weeks from today. Resultantly, the order dated 15.01.2022 stands quashed and set aside. Application below Exh. 1 stands allowed. As a consequence of allowing that Application, order dated 21.07.2017 is quashed and set aside.

8. Subject to production of receipt towards costs paid before the learned Appellate Court, the learned Appellate Court shall permit the Petitioner to pay the paper book charges and thereafter proceed with the hearing of the statutory Appeal strictly in accordance with law and without being influenced by any of the observations made in the impugned order dated 15.01.2022. All contentions of the parties are expressly kept open.

9. With the above directions, Writ Petition is allowed and disposed. Interim Application is also accordingly disposed.

[MILIND N. JADHAV, J.]

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