



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

CIVIL APPLICATION NO. 348 OF 2023

AND

CIVIL APPLICATION NO. 349 OF 2023

IN

SECOND APPEAL NO. 323 OF 2006

Shyamdeo @ Thamdeo S/o. Ramaji Dongarwar and others
.VS.

Dolaram S/o. Aadku Kapgate and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr O. W. Gupta, Advocate for the appellants

Mr T. T. Mirza, Adv. h/f. Mr A. M. Quazi, Advocate for respondent Nos. 2 to
6, 1(a), (b) to 8 and for proposed LR's of respondent No. 2

CORAM : G.A. SANAP, J.

DATE : MARCH 07, 2024.

Heard learned Advocates for the parties.

2. Civil Application No. 348 of 2023 has been made seeking condonation of delay caused in filing the application for bringing the legal heirs of deceased respondent No.2 on record and also for making the application for setting aside the abatement of appeal. Civil Application No. 349 of 2023 has been made for bringing the legal heirs of deceased respondent No.2 on record and also for setting aside the abatement of appeal.

3. These applications are seriously opposed by the learned holding Advocate for the respondent Nos. 2 to 6, 1(a), (b) to 8 and for proposed LR's of respondent No. 2. Learned Advocate submitted that the statement made in the application that the appellants did not know about the death of respondent No.2 is not acceptable at all. Learned Advocate submitted that considering the delay, the abatement cannot be set aside by condoning the delay.

4. Learned Advocate for the appellants submitted that after filing the paper book, the appellants were not in his contact and when the matter was ready for a final hearing, he wrote a letter to the appellants and made an inquiry about the living status of the parties to the appeal. Learned Advocate submitted that thereafter he came to know from the appellants that respondent No.2 has died. It is submitted that for the purpose of adjudicating the appeal finally on merits against the respondents, it is necessary to condone the delay and allow the appellants to bring the legal heirs of respondent No.2 on record.

5. The appellants are the rustic villagers. They are agriculturist. In the second appeal, the major role is played by the advocates. The presence of the parties is not insisted upon at the stage of the final hearing. The question is whether the delay was intentional or not. On perusal of the applications, it appears that when the matter was listed for a final hearing, by way of an abundant caution, the advocate for the appellants wrote a letter to the appellants and made an inquiry about the living status of the parties. It is to be noted that if such an inquiry was not made, then the matter would have proceeded and been decided.

6. It is pertinent to note that Advocate who had filed the vakalatnama for the deceased respondent No.2 was under a legal obligation to inform the Court about the death of respondent No.2. It is not the case of the advocate of the respondents that they informed their advocate about the death of respondent No.2. The advocate appearing for the party, after the death of the party, is required to intimate the Court about the death and place on record the particulars as to the legal heirs/legal representatives of the deceased. The record indicates

that the advocate for respondent No.2 did not place on record any such information. The reply is silent about any such information received by the advocate. In my view, therefore, the submissions advanced on behalf of the respondents cannot be accepted.

7. The adjudication of the case on merit in one round of litigation is necessary to avoid the multiplicity of proceedings between the parties. Such applications cannot be decided by adopting a technical approach. The appeal has abated against respondent No. 2 alone. There are eight respondents who are still contesting the appeal. In my view, therefore, the delay deserved to be condoned. As such, both applications are **allowed**.

8. Delay caused in filing the application for bringing the legal heirs of deceased respondent No.2 on record and also for making the application for setting aside the abatement of appeal is condoned.

9. The order of abatement is set aside.

10. The appellants are allowed to bring on record the legal heirs of respondent No.2, whose names and particulars are provided in Civil Application No. 349 of 2023.

11. The order must be complied within eight weeks.

12. Both civil applications stand disposed of, accordingly.

(G. A. SANAP, J.)

Namrata