



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 2043 OF 2023

Sahebrao Laxman Zalke,
aged about 55 years, Occ. Agri.,
R/o Zilpa, Tah. Katol, Dist. - Nagpur.

...PETITIONER

Versus

Natthu s/o Narayan Zalke
(since deceased through LRs)

- 1] Anusayabai s/o Natthuji Zalke,
aged about 74 years, Occ. Household.
- 2] Rashmitai w/o Mangesh Mohod,
aged about 24 years, Occ. Household.
- 3] Ashok s/o Natthu Zalke (since deceased).
- 3-a] Amita Ashok Zalke,
aged about 44 years, Occ. Household.
- 3-b] Pranav Ashok Zalke,
aged about 18 years, Occ. Education.
- 3-c] Tushar s/o Ashok Zalke,
aged about 16 years, Occ. Student.
Being minor, through mother Respondent no.3-a.

All are R/o Zilpa, Tah. Katol, Dist. Nagpur.

- 4] Ashatai @ Jyotitai w/o Ramesh Rao Dhote,
aged about 51 years, Occ. Household,
R/o Karnja (Ghadge), Tah. Karnja (Ghatge),
Dist. - Wardha.

...RESPONDENTS

Shri B.W. Patil, Counsel for the petitioner.

Shri S.V. Deshmukh, Counsel for respondent nos. 1, 2, 3-a, 3-c and

4.

Shri N.S. Munghate, Counsel for respondent no.3-b.

CORAM : ANIL L. PANSARE, J.

DATE : JULY 16, 2024

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the parties at the stage of admission itself.

2] The petitioner – original defendant has filed present petition against the legal representatives of the original plaintiff being aggrieved by order dated 14/2/2023 passed by Ad hoc District Judge – 2, Nagpur below Exh. 5 in Civil Misc. Application No. 307/2020. The learned District Judge has rejected the application filed by the petitioner seeking to bring on record legal representatives of original plaintiff and to delete the name of original plaintiff.

Necessary facts are as under :

3] The father of respondents – Natthu filed a suit

against the petitioner, which came to be dismissed on 8/11/2011. He filed appeal against the said order. The appeal came to be allowed ex parte on 15/4/2019.

4] The petitioner filed application on 7/9/2020 seeking to condone delay in filing application for setting aside ex parte decree. Notices were issued but returned back unserved with remark that father of the respondents has expired. Thereupon, the petitioner filed application to delete the name of father of the respondents and to bring on record his legal representatives. This application has been rejected on the ground that when application seeking to condone delay was filed, the father of the respondents had already expired and, therefore, the application was not maintainable.

5] I find this approach to be erroneous inasmuch as it is nobody's case that the petitioner was aware of the death of the respondents' father. In that sense, he has correctly filed application against the respondents' father and upon coming to know the fact of his death, filed application to bring on record

the legal representatives of the respondents' father.

6] The learned Counsel for the respondents submits that prayer to delete the name of respondents' father ought not to have been made.

7] This argument, though correct, was not a ground for rejection of application. The ultimate aim of the petitioner was to prosecute the respondents' father and after his death the trial Court could have allowed the application to the extent of bringing on record the respondents i.e. the legal representatives of the original plaintiff.

8] The finding, being erroneous, is liable to be set aside. Accordingly, order dated 14/2/2023 passed by the Ad hoc District Judge – 2, Nagpur below Exh. 5 in Civil Misc. Application No. 307/2020, is quashed and set aside. The application below Exh. 5 is allowed to the extent of prayer seeking to bring on record the respondents i.e. the legal representatives of the original plaintiff. Necessary amendment be carried out within 15 working days from today. The

application seeking condonation of delay is restored on file of the District Judge, Nagpur.

9] Rule is made absolute in the aforesaid terms.

JUDGE

Sumit