



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

CIVIL APPLICATION (CAO) NO.418 OF 2024

IN

CIVIL APPLICATION (CAS) NO.1337 OF 2023

IN

SECOND APPEAL STAMP NO.18488 OF 2023

(Devendra s/o Rajmal Puglia (dead) thr. LR's Smt. Prabha wd/o Devendra Puglia and others Vs. State of Maharashtra thr. Collector, Chandrapur and others)

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

Court's or Judge's orders.

Ms. Tejal Agre, Advocate h/f Mr. S. P. Bhandarkar, Advocate for Appellants.
Mr. Bhagwan M. Lonare, APP for Respondent Nos.1 and 2/State.

CORAM: ANIL L. PANSARE, J.

DATE: 8th APRIL, 2024.

On previous date i.e. on 26.03.2024 following order was passed:

“By present application, the applicants are seeking to condone delay of 1246 days in filing application for bringing on record the legal representatives of respondent no.3 (respondent no.1 before the First Appellate Court) and for setting aside abatement.

2] The judgment and decree under question has been passed by the First Appellate Court on 29/11/2022. Respondent no.3 has expired on 8/7/2020. Thus, the decree has been passed against a dead person. The decree, therefore, is nullity.

3] The learned Counsel for the

applicants shall take instructions as to whether she intends to pursue the application or will take appropriate steps before the appropriate forum.

4] Stand over to 8/4/2024.

2. Thus, it is apparent that the respondent no.3 had expired pending first appeal. Respondent No.3 was plaintiff before the trial court in Regular Civil Suit No.4/2013. The suit was filed against State of Maharashtra as also the legal representatives of Devendra s/o Rajmal Puglia (the original defendant no.3) seeking declaration with perpetual and mandatory injunctions. The subject matter of the suit is a property in Survey No.86/1 admeasuring 1.96 H.R. situated at Wadgaon within the Municipal area of Chandrapur. The respondent No.3 received his share being Survey No.86/1-E admeasuring 0.392 Hectare, hereinafter referred to as suit land. The respondent No.3 constructed his house and hotel thereon. The State authorities along with appellant have allegedly demolished the hotel. Accordingly, the respondent No.3 sought a declaration that the action initiated by the State authorities at the instance of appellant is illegal, null and void. He sought a further relief of mandatory injunction directing the State authorities to restore his hotel and to not disturb his peaceful possession.

3. The trial court partly decreed the suit and was pleased to declare that the aforesaid action dated

28.01.2023 was illegal, null and void. The trial court further directed the appellant – original defendant no.3 to remove construction on the suit land and to handover vacant possession to the respondent no.3.

4. The appellant/legal representatives of defendant no.3 filed first appeal against the judgment in Regular Civil Appeal No.41/2014. The first appellate court has dismissed the appeal. However, the respondent no.3 herein expired pending appeal. His legal representatives were not brought on record. In that sense, the decree though is passed in favour of respondent no.3 is in effect passed against the dead person.

5. The Supreme Court in the case of ***Gurnam Singh (Dead) through legal representatives and others v. Gurbachan Kaur (dead) by legal representatives (2017) 13 SCC 414*** dealt with a question whether the judgment/order is nullity having passed in favour and also against the dead person. The Supreme Court answered the question in affirmative. In the present case as well, the respondent no.3 expired pending appeal. The right to sue survived and therefore, his legal representatives ought to have been brought on record. Having not done so, the decree passed against the dead person would become nullity.

6. The counsel appearing for the applicant would agree with the status. The counsel however, seeks permission to take appropriate steps before the first

appellate court.

7. To my mind, the permission is not required. The moment, the applicant came to know of the death of respondent no.3, the applicant ought to have taken appropriate steps in terms of the Order 22 of the Code of Civil Procedure.

8. The sum and substance of the above discussion is that the first appeal stood abated against respondent no.3. The decree has been passed against the dead person and therefore, is nullity. The judgment and decree dated 29.11.2022 passed by first appellate court in Regular Civil Appeal No.41/2014 is liable to be quashed and set aside. Consequently, the judgment and decree dated 28.02.2014 passed by the trial court in Regular Civil Suit No.4/2003 is restored. Order accordingly.

9. The applicants are at liberty to take appropriate steps in accordance with law.

10. The application is disposed of in the above terms.

JUDGE