



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

Writ Petition No.2595/2020
(Mohd. Raees Mohd. Saeed V Kisan and others)

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

Court's or Judge's orders

Mr. P.S. Wathore, Advocate for petitioner.
Mr. Mardikar, Senior Counsel a/b Mr. Ved Deshpande, Advocate for resp. nos.1 (a), (b),
(c) and (e).
Mr. A.D. Bhate, Advocate for resp. nos.2(a) and (b).
Mr. A.C. Dharmadhikari, Advocate for applicant/intervenor.

CORAM : N.R. Borkar, J.

DATE : 23-09-2024.

This petition takes exception to the order dated 06-03-2020 passed by the learned 4th Joint Civil Judge, Junior Division Khamgaon in M.J.C. No.28/2013.

ii. By the order impugned the learned trial Court has rejected the application filed by the petitioner under Order 9 Rule 13 of the Code of Civil Procedure for want of prosecution.

iii. The above application was filed by the petitioner for setting aside the decree dated 31-12-2012 in favour of original plaintiff Kisan Balwar. As the original plaintiff had died during the pendency of the application, an application was filed for bringing his legal representatives. On

09-07-2019, the application for bringing legal representatives of the original plaintiff was allowed. The order to that effect reads thus :

"As the application is within limitation this application be deserves to be allowed. Hence applicant to bring names of L.R.'s on record within 14 days from today and carry out amendment."

iv. On the very same day the above order was recalled as it was found that the application was not within limitation.

The order to that effect reads thus :

"Later on it was brought to notice that application is not in Limitation, as the respondent died on 02.11.2014. Hence as application is not within limitation as per Article 120 of Limitation Act and as there is no application for setting aside abatement or for delay this application is rejected and earlier order recalled u/s. 151 of C.P.C."

v. After passing of the above order no steps were taken in the matter. The learned trial Court thus by the order

impugned has rejected the main application, for want of prosecution.

vi. I have heard the learned Counsel for the petitioner, the learned Counsel for the contesting respondents, and the learned Counsel for the intervenor.

vii. The learned Counsel for the petitioner submits that one opportunity be granted to prosecute the application.

viii. On the other hand, the learned counsel for the respondents submits that considering the facts and circumstances the application may not be restored.

ix. The learned Counsel for the intervenor submits that intervenor is the *bonafide* purchaser of the suit property. It is submitted that the intervenor be allowed to prosecute the application.

x. Considering the overall facts and circumstances, it would be in the interest of justice to restore the application.

Hence, the following order is passed :-

- (a) The order impugned is set aside.
- (b) MJC No.28/2013 be restored to the file of trial Court, subject to payment of cost of Rs.5000/-.
- (c) The petitioner shall pay the said cost to Legal Aid Services Sub-Committee, High Court Bench at Nagpur within four weeks.
- (d) Liberty is granted to the intervenor to file appropriate application before the learned trial Court. If such application is filed the learned trial Court shall decide it on it's own merits.

(N.R. Borkar, J.)