



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

WRIT PETITION NO. 5973 OF 2023

(Bapurao Bhiva Telang (died) through LRs Vs. Wasudeo Ganpati Telang & Anr.)

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

Court's or Judge's orders.

Mr. A.D. Ramteke, Counsel for the petitioners.

Mr. M.M. Agnihotri with Mr. M.M. Agnihotri, Counsel for the respondents.

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CORAM : ANIL L. PANSARE, J.
APRIL 24, 2025

Challenge is to order dated 23/3/2021 passed by the Principal District Judge, Chandrapur, in Misc. Civil Application No. 24/2021.

2] An application was filed by the legal representatives of the original appellant for restoration of appeal and for taking on record the legal representatives.

3] The First Appellate Court noted that the applicants and the non-applicants are relatives and their fields are situated adjacent to each other. Deceased Bapurao filed a Civil Suit for encroachment against the non-applicants, which was decided on 22/12/2011. Bapurao filed appeal against the judgment and decree. He expired seven years after filing appeal. Intimation of his death was not given to the Court.

4] The Court further noted, on the basis of reply filed by the respondents/non-applicants, that petitioner no.2/applicant no.2 was present in the Court with his father. Petitioner nos. 2 and 3/applicant nos. 2

and 3 had been to the Court on 23/3/2021 as well, but did not take steps. Thus, the Court found that the petitioners/applicants had knowledge of pendency of appeal.

5] During the course of argument, Mr. M.M. Agnihotri, learned Counsel for the respondents, has invited my attention to the bailiff's report dated 24/2/2021. It appears that the bailiff approached the house of Bapurao, where he found petitioner no.2's wife present, who informed that Bapurao expired on 12/6/2018. She put signature below her statement.

6] Thus, the wife was aware that bailiff had visited the house and she had informed him of death of her father-in-law. This fact, however, has been not disclosed by the petitioners in the application filed before the First Appellate Court or in the petition. What is stated is that in February – 2021, the neighbour of deceased Bapurao had called petitioner no.1 and informed him that Court person had visited his father's house.

7] Thus, it is surprising that the petitioners have come up with a case that the neighbour of deceased Bapurao called petitioner no.1 and informed him of bailiff/person of Court. The petitioners have not disclosed as to why couldn't they acquire knowledge through petitioner no.2's wife, who had first hand information. The petitioners have then stated that petitioner no.1 enquired about the Court matter as also the Counsel, who appeared for deceased Bapurao, and after getting knowledge, they visited the office of the Counsel and

came to know about pendency of appeal. The application is, however, completely silent as to the source of knowledge/information. In other words, the petitioners have not disclosed as to from whom they acquired knowledge of the name of the Counsel, who appeared for deceased Bapurao.

8] Thus, the petitioners have not only suppressed material facts, but have not come clean with source of knowledge. That apart, the petitioners failed to file an application to set aside the order of abatement.

9] As such, once the application for bringing on record legal representatives is filed, one could gather from the application that there is implied prayer for setting aside order of abatement. However, the difficulty in the present case is that the petitioners have not come clean and have suppressed vital facts.

10] That being so, I do not find any reason to interfere with the impugned order. The petition is dismissed. No costs.

(ANIL L. PANSARE, J.)

Sumit