

Order below Ex.36 in R.C.S No. 26/2003.

1. Application Ex.39 is made by the plaintiff for taking the legal heirs of the deceased Leelabai on record. The plaintiff had made application Ex.59 for condoning the delay for making application for taking the legal heirs on record.

2. Application Ex. 39 is resisted by the defendant on the score that there is inordinate delay in making the application for bringing the legal heirs on record. He contended that the reason for the delay has not been properly explained by the appellant. The respondent further contended that the appellant had filed appeal bearing No.36/2021 before the Hon'ble High Court without bringing on record legal heirs of the respondent No.4 Motilal and respondent No.9 Harnabai @ Laxmibai and as such the aforesaid decision in appeal bearing No.36/2021 cannot be considered to be legal. The respondents wished to reject the application and prayed to dismiss the appeal against them.

3. Ld. Advocate Shri Ganpule for the defendants has contended that the application is not tenable as the appellant has not made the application for bringing the legal heirs on record when the Hon'ble High Court heard and decided the appeal against the person who were dead. The Ld. Advocate Shri.Ganpule submitted that non substitution of legal representatives of the deceased respondent during pendency of appeal before Hon'ble High Court resulted into abatement of appeal against all the respondents as it abates in its entirety. In this

connection he has placed his reliance on the decision of *Yashwant vs Sunita reported in 2020(2) Mh.L.J. 191*

4. The aforesaid decision helps more to the appellant than to the respondents. This because in that decision though the Hon'ble High court had held that there had been abatement of the appeal but then in that decision itself his Lordship had given liberty to the appellant to bring legal representatives on record. The operative part of the decision runs as under :-

Hence, the following order.

(i)

(ii)

(iii) *Liberty is given to the Respondent No.1-plaintiff to file application under Order XXII, Rule 4 a/w 9 or rule 4(4) of Civil Procedure Code before the District Court, Sangli, either to set aside abatement and to bring on record the legal representatives of the deceased defendants or to seek exemption from bringing on record the legal representatives of the deceased defendant Nos.4, 8 and 9.*

(iv) *The learned District Judge shall first decide the said application / applications and thereafter to hear and decide the appeal on merits in accordance with law.*

(v)

(vi)

In view of disposal of the second appeal, the civil applications does not survive and hence stands disposed of.

Appeal allowed.

5. Furthermore, I also do not find any merits in the submission of the Ld. Advocate Shri Ganpule that since the period of

the Limitation prescribed by the Limitation Act for bringing the Legal Representatives on record and for set-aside the abatement has expired the appeal stands abated in its entirety. No doubt period for bringing Legal Representative's has expired. But, the period of limitation for setting aside abatement would be condoned. This because abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representative on record without there have been passed on record a specific order dismissing the appeal as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representative of the deceased party on record would seek the setting aside of an abatement.

6. That apart it needs to be stated here that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law, inevitably necessitates it. Consequently, having regard to the nature of the dispute between the parties and the purpose of reference proceedings and the appeal therefrom, this court has no option but to adopt a liberal approach in the matter of condonation of the delay as well as the considerations which should weigh in adjudging the application for bringing legal representatives on record.

7. Even assuming that the decree appealed against or challenged before the Higher forum is joint and several but deal with the rights of more than one recognized in law to belong to each one of them on their own and unrelated to the others, and the proceedings abate in respect of one or more of either of the parties, the Courts are not disabled in any manner to proceed with the proceedings so far as the remaining parties and part of the appeal is concerned. As and when it is found necessary to interfere with the judgment and decree challenged before it, the Court can always declare the legal position in general and restrict the ultimate relief to be granted, by confining it to those before the Court only rather than denying the relief to one and all on account of a procedure lapse or action or inaction of one or the other of the parties before it. **(See Sardar Amarjit Singh Kalra & Ors. Vs. Pramod Gupta & Ors. AIR 2003 SC 25885).**

8. The appeal, which was the subject-matter of challenge before the Hon'ble High Court, viewed in the light of the above discussion, would not render them to be a joint and inseparable decree but in substance a mere appeal before the Hon'ble High Court and, therefore, joint and several or separable vis--vis the individuals or their claims concerned is not applicable in the present case in the hand. Consequently, even the automatic abatement of the appeal in the High Court in respect of one or other of the appellants cannot by itself result in the abatement of the appeal in its entirety or render it liable to be dismissed as not duly or properly constituted or not possible to be proceeded with. That apart, since I have also arrived at a conclusion that the delay in bringing legal representatives on record deserves to be

condoned and in this regard abatement also are deserves to be set aside and the legal representatives of the deceased respondents before this Court are directed to be brought on record in the present appeal.

9. As far as possible Courts must always aim to preserve and protect the rights of parties and extend help to enforce them rather than deny relief and thereby render the rights themselves otiose, 'ubi jus ibi remedium' (where there is a right, there is a remedy) being a basic principle of jurisprudence. Such a course would be more conducive and better conform to a fair, reasonable and proper administration of justice. Therefore, I do not find substance in the submission of Ld. Adv. Shri. Ganpule for the respondent that non substitution of legal representatives of the deceased respondent during pendency of appeal resulted into abatement of appeal against all the respondents as it abates in its entirety.

10. For all the reasons stated above, I am unable to accept the contention of Ld. Advocate Shri. Ganpule for the respondents that the appeal as abated in its entirety. More so when, it would result in grave injustice to the appellant in denying him of his right to have an adjudication of his claims on merits. Therefore, as stated while allowing application Exh.34 that there is justification to condoned delay as prayed for and further keeping in view the pendency of the appeal before the Hon'ble High Court, and so by adopting a liberal and reasonable approach, it would apt to allow the Appellant to bring legal representatives on record since that would facilitate an effective

adjudication of the rights of parties on either side, avoiding summary rejection of the appeals in entirety.

11. In view of above discussion and the facts and circumstances in the present case, I do not find gross negligence or deliberately inaction which would dis-entitled the appellant from seeking indulgence of the court to bring legal representatives on record. Moreover, considering the above stated ground for not making application within the period of limitation. Consequently it is fit case to allow the aforesaid application for condoning delay besides another application to bring the legal representatives on record since the right to sue survives against them. But subject to cost in sum of Rs.2000/- to be paid to the respondents.

In the result , the following order is passed.

ORDER

1. Application Ex. 36 is allowed.
2. The automatic abatement of the suit stands set-aside.
3. The Legal Representatives of the deceased respondent Nos.4 Motilal Bhaurao Ingale, No.9 Harnabai @ Laxmibai Haribhau Milkhe be caused to be made parties to the suit subject to cost in sum of Rs.2000/- to be paid to the respondents by the appellant.
4. The appeal to proceed further.

Date : 20-03-2024

(D.S.Ghumare)
District Judge-1,
Sangamner