



CNR No.MHNG100003582015
R.C.S.No.31/2015
(Old R.C.S. No.1149/2008)
Smt. Sushila and others Vs. Soma and others

COMMON ORDER BELOW EXH.102 to 104
(Order passed as on 17th day of March, 2021)

[01] The applications are for condonation of delay, setting aside abatement and for bringing the LR's on record. Perused applications and say given by defendant no.1. Heard.

[02] It has been contended by applicants that the original plaintiff no.2 Smt. Saraswati Wd/o. Gopalrao Bhandarkar died on 11.12.2018. Applicants no.2-A to 2-E are her legal-heirs. It has been contended that during pendency of suit the defendant no.1 had filed one application Under Order VII Rule 11 for rejection of plaint. Since long the matter was pending for disposal of said application Exh.88. Thereafter, the matter has been transferred from Jt. Civil Judge Junior Division Umred to present C.J.S.D. Court Umred. It has been contended that there is near about 370 days delay in bringing LR's on record. The delay is not deliberate as well as intentional one. Due to aforesaid circumstances on record, applicants failed to bring their names at the place of original plaintiff no.2. Thus, applicants prayed for allowing the application.

[03] On the other hand, the LR's of defendant no.1 have strongly opposed the application. It has been contended that the applicants have not given any satisfactory explanation for condonation of delay. It has been contended that the applicants are trying to prolong the matter. Thus, the LR's of defendant no.1 prayed for rejection of the application with costs.

[04] As mentioned in the applications, applicants claimed that deceased plaintiff no.2 died leaving behind in all five legal-heirs. The pursis regarding the same has been filed at Exh.94. Said pursis is seems to be filed by counsel for plaintiff on 21.12.2018. As per said pursis the original plaintiff no.2 is reported to be dead on 11.12.2018. Thus, applicants were duty bound to bring their names on record within stipulated period of 90 days from the date of demise of late plaintiff no.2. Thus, more than 15 months delay is seems to be caused for filing of the applications.

[05] As per Section 5 of the Indian Limitation Act a provision has been made for condonation of delay, which runs as under.

“Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

[06] Here in case at hand, the matter relates to immovable property. The valuable rights of both parties are seems to be involved in the matter. The plaintiff specifically submitted that the delay caused for setting aside abatement is not deliberate as well as intentional one. In ***Perumon Bhagvathi Devaswom Vs. Bhargavi Amma, 2009(2) Mh.L.J., page 1 (SC)***. It has been observed that the word sufficient cause in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bonafides, deliberate in action or negligence on the part of plaintiff.

[07] It has been submitted on behalf of applicants as the matter was pending for a decision on application Exh.88 i.e. for the application submitted under Order VII Rule 11 of C.P.C. and thereafter as the matter has been transferred to this C.J.S.D. Court Umred and hence they couldn't apply for brining their names on record. No doubt the reason shown by applicants is not acceptable, however the matter relates to immovable property. The valuable rights of applicants are seems to be involved in this suit. Hence, in view of the discussion given supra as matter relates to the rights and interest in immovable property, I think the delay needs to be condoned and the permission to bring the LR's on record needs to be granted to the applicants. So far as delay is concern the applicants can be directed to pay the costs to the account of DLSA. Hence, in the interest of justice I proceed to pass the following order.

ORDER

- [01] Applications (Exh.102 to 104) are hereby allowed subject to costs of Rs.1,500/- (Rs. One Thousand Five Hundred only) payable to the account of DLSA, Nagpur.
- [02] After depositing the costs the delay shall stand condoned as prayed.
- [03] Plaintiffs to carry out necessary amendment and to supply the copy of amended plaint for court record as well as for the defendants.

Umrer.
Date : 17/03/2021

(S. K. Fokmare)
Civil Judge Senior Division, Umrer.

Certificate

“I affirm that the contents of this P.D.F. file order are word to word same as per original order”.

Name of Stenographer : **Mr. Mahendranath D. Nagpure.**
Stenographer (Grade III)

Court Name : Civil Judge Senior Division, Umrer

Order signed on : 17/03/2021

/home/ubuntu/1-C.J.S.D./ORDERS/10-ORDER FOR BRINGING LR'S
ON RECORD/