



CNR No.MHNG100009972017
R.C.S.No.154/2017
(Old R.C.S.No.273/2014)
Dhanraj Vs. State+07

COMMON ORDER BELOW EXH.33 to 35
(Order passed as on 19th day of January, 2021)

[01] The applications are for condonation of delay regarding setting aside abatement and for bringing the LR's on record. Perused applications. No say given by other side. Despite of knowledge the proposed LR's failed to attend the court and also failed to submit their say. Heard.

[02] According to plaintiff the original defendant no.7 Sau. Pramila Ramdas Wilayatkar died in September 2014. The pursis regarding her death has been filed on record on 01.10.2014. It has been contended that despite of getting necessary efforts the plaintiff couldn't collect the names of legal-heirs of late defendant no.7 and hence on 13.01.2016 he applied before this court for getting the names from defendant no.8. The defendant no.8 has supplied the names of Lrs vide pursis Exh.31 dt.04.07.2016. It has been contended that the delay in filing these applications is not deliberate as well as intentional one. Thus, plaintiff prayed for allowing the applications.

[03] As mentioned in the applications, applicants claimed that deceased defendant no.7 died leaving behind in all five legal-heirs. Out

of five legal-heirs one legal-heir namely Subhash Ramdas Wilayatkar is reported to be dead. The pursis regarding the same has been filed at Exh.41. There is nothing on record to disbelieve the said statement made by the plaintiff. Here, 333 days delay is seems to be caused for filing of the application.

[04] 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.”

[05] 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. The contention put fourth by plaintiff has not been denied or challenged by other side. Thus, this reason is seems to be a sufficient as well as probable for causing delay in brining the LR's on record. Moreover, mere delay is not the ground to reject the application. 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 inaction or negligence on the part of plaintiff.

[06] It has been submitted on behalf of plaintiff that as he was not aware about the legal-heirs of late defendant no.7 and hence couldn't bring their name within time. 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 plaintiff. So far as delay is concern the plaintiff 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.33 to 35) are hereby allowed subject to costs of Rs.300/- (Rs. Three Hundred) payable to the account of DLSA, Nagpur.
- [02] After depositing the costs the delay shall stand condoned as prayed.
- [03] Plaintiff to carry out necessary amendment and to supply the copy of amended plaint for court record as well as for the defendants.

Umrer.
Date : 19/01/2021

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

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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 : 19/01/2021

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LR'S ON RECORD/

Contd..