

LAR No.323/2009
Yuvraj Vs. State & Oth.

ORDER BELOW EXH. 46

Read the application, say and record. Heard. Sole claimant Yuvraj died on 28.01.2018. His father and mother are brought on record. Thereafter his mother No. 1B Smt. Kaushalyabai died on 13.09.2020 due to COVID. Her husband claimant No. A is an aged and heart patient. They have one son Manish. Manish has filed this application to set aside abatement order. L.R. ought to have been brought on record within 90 days of the date 13.09.2020. But due to COVID period there is delay and this application has been filed on 04.11.2022. Other side has objected by submitting that delay is not explained. Ld. Advocate for applicant has relied upon three rulings. First is in the matter of Hanmavva & others Vs. Pettiya , 2009 (1) Civil L.J. 271. Parties were illiterate agriculturist who had to move from place to place in search of work. Considering that delay of 725 days in filing second appeal was condoned. In the matter of N. Balkrushnan Vs. M. Krishnamurty, AIR 1998 SC 3222, fault was on the part of advocate. In that view, delay was condoned for filing application to set aside ex-parte decree. Order dated 10.01.2022 of the Hon'ble Supreme Court in MCA No. 21/2022 in Suo Moto Writ Petition No.(C) 3/2020 in Recognizance for extension of limitation is also filed. It shows that in view of the COVID period, limitation period which was to expire in between 15.03.2020 till 28.02.2022, was extended for further 90 days from date 01.03.2022.

2] Application itself shows that even if the benefit of above extension of limitation period is given to the applicant, still there is delay of 9 months.

3] In Abdul Karim Vs. State of Madhya Pradesh, AIR 1964 (MP) 171, it is observed that reference proceedings under section 18 of Land Acquisition Act, 1894 are not civil proceedings. Therefore, once such reference is filed, finality of the Award made by Land Acquisition Officer stands ceased and the final order which will be passed by the Court to whom the reference is made, is the Award under section 26 of it. Therefore, such proceedings cannot abate automatically on the death of the person at whose instance reference was made. Even Order 22 of CPC and consequently provisions of Limitation Act are not applicable.

4] Thus, for the forgoing reasons, since the landed property of the deceased claimant was acquired, I find that opportunity needs to be given to her L.R. to support their claim and this can be done only if L.R. is brought on record. Therefore, I pass following order :-

ORDER

Application is allowed.

Umred.
Dated: 29.11.2024.

[S. G. Landge]
Civil Judge Sr. Dn., Umred,
Dist. Nagpur.

Certificate

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

Name of Stenographer : **Mrs. Kavita M. Balpande**
Stenographer (Gr.I)

Court Name : Civil Judge Senior Division,
Umred.