

RCS No. 07/2012

Anusayabai+2 -Vs. -Parvatibai+4

ORDER BELOW EXH.64

(Dt.17.08.2018)

1. Perused application and say. Heard, Shri. Zahir Khan, learned advocate for the applicants and Shri. Narwade, learned advocate for the defendants No. 2, 4 and 5.
2. Applicants claim to be legal representatives of Godavaribai, i.e. plaintiff no. 2. She died on 10.01.2015. Applicants did not know about the pendency of the suit. As such they could not file this application within time. Prayed to set aside abatement order, condone delay and take them on record as legal representatives of said Godavaribai.
3. Defendants no. 2, 4 and 5 filed say at Exh. 68. It is contended by them that deceased Godavaribai was the mother of applicants. She is one of the plaintiffs in the suit. The suit is for partition and separate possession. Therefore, it can not be believed that applicants did not know that the suit was pending. Applicants were well aware that the suit is pending. Ground for delay as put forth by the applicants is not proper one. Delay is not properly explained. An application Exh. 29, which was filed in this suit itself, in the similar circumstances is rejected by this court. In the circumstances this application is liable to be rejected with costs.
4. On the basis of rival pleadings of the parties, the points which arise for determination, the findings on them and the reasons for arriving at such findings are as follows.

Points	Findings
1. Whether the abatement order is liable to be set aside ?	... Yes.
2. Whether delay for making this application is liable to be condoned ?	... Yes.

3. Whether the applicants are entitled to be taken on record as legal representatives of deceased plaintiff no. 2 Godavaribai ? ... Yes.
4. What order and cost ? Application allowed subject to cost.

REASONS

As to point no. 1, 2 and 3.

5. Point Nos. 1, 2 and 3 are inter related therefore, they are taken up for discussion together.
6. It is not denied by the answering defendants that the applicants are the legal representatives of deceased plaintiff no. 2 namely, Godavaribai. It is admitted fact that deceased Godavaribai was the mother of these applicants.
7. Godavaribai died on 10.01.2015. This application is preferred on 08.12.2017. Delay of 2 years 10 months and few days is caused to prefer this application.
8. If an applicant seeks exception to the rule of limitation, he has to explain the delay satisfactorily. If the party fails, adverse inference can be drawn. However, it has to be taken into consideration that each case differs from others in a number ways.
9. It is the contention of the applicants that the delay is caused due to want of knowledge of the pendency of the litigation. There are two things. First, delay caused for want of knowledge of death of the party. Second, delay caused for want of knowledge of the pendency of the litigation. When an applicant pleads that he is the legal representative of the party to the litigation and he was unaware about the fact of death of such party. Then the delay caused is necessary to be properly explained. If the party who died during the pendency of the suit, happens to be the mother or any

other family member, then applicant can not seek the exception to limitation without proper explanation. Because in such circumstances presumption of knowledge will work against the applicant. Such an applicant is expected to have knowledge of the fact of death of the party. In the second contingency, no such presumption will arise. Everyone can not be expected to know the fact of litigation pending between his family members and others. No doubt there is possibility that someone has such knowledge. However, the degree of possibility of knowledge in the former case is stronger than the latter. In the later case no such presumption can be put to service.

10. Now coming to the objection of the defendants. It is argued that similar application, Exh. 29 is rejected by this court. After going through application Exh. 29 it is seen that said application was filed for bringing legal representatives of deceased Rambhau Ankhule (Defendant no. 2) on record. Before, application Exh. 29, application Exh. 24 and 25 were filed on record and those applications were rejected. The issue in application Exh. 24 and 25 and Exh. 29 was one and same. On careful perusal of those applications it can be seen that in those applications delay was sought to be condoned on the ground of want of knowledge of death of death of the party. Secondly, once application Exh. 24 and 25 were decided on merit the party had no locus standie to file another application Exh. 29. In these circumstances application Exh. 29 was rejected. Rejection of application Exh. 29 has no bearing on the merits of this application. There is no similarity in these two applications (Exh.29 and present application) except the fact that both the applications are for setting aside abatement order, condonation of delay and bringing legal representatives on record.

11. Now coming to the next aspect. Though it can not be expected that the applicants should have knowledge of the litigation pending between their mother and others. However, having regard to the nature of the litigation, the applicants are expected to be

diligent. Secondly, an application, Exh. 62, for same cause, was filed by these applicants on 11.08.2017. Eventually, they not-pressed it. This application is preferred on 08.12.2017. It is no where explained by the applicants as to why delay of near about 04 month is caused to prefer this application. Case is more than five years old. Due to want of steps by the applicants it is stagnated for a considerable time. This in effect resulted into delaying the case. As such the applicants are liable to compensate the other side.

- 12.** In the facts and circumstances of the case at hand and for the reasons discussed above, application deserves to be allowed. Therefore, point no. 1 to 3 are answered in the affirmative and in answer to point no. 4 following order is passed.

ORDER

1. Application allowed subject to costs.
2. Applicants shall jointly pay Rs.1,000/- to each contesting defendants as cost. Cost be paid within 25 days from the date of this order.
3. Applicants/plaintiffs do carry out amendment and file amended copy of the plaint on record within stipulated time by law.

(Dictated and pronounced in open court).

Dt. 17.08.2018

(R. B. Hanwate)
Civil Judge, Jr. Divn., Mahagaon