
(1992) 01 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No. 3880 of 1984

Bapusaheb Raosaheb Desai

APPELLANT

Vs

Nanasaheb alias Narayan Shripad Deshpande and Others

RESPONDENT

Date of Decision : 08-01-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 1
Limitation Act, 1963 — Article 120

Citation : (1993) 1 BomCR 1

Hon'ble Judges : A.A. Cazi, J

Bench : Single Bench

Advocate : S.L. Kapse, for the Appellant; Rajendra V. Pai, for the Respondent

Judgement

A.A. Cazi, J.—The petitioner was the plaintiff in Regular Civil Suit No. 52 of 1974 in the Court of the Civil Judge, Junior Division, Gadhinglaj. Respondent No. 1 and one Bhima Dhondi Patil were the two defendants. Bhima Dhondi Patil died during the pendency of the suit on 2nd May, 1983. An application was made on 23rd April, 1984 to the trial Court on behalf of the petitioner bringing the heirs and legal representatives of the deceased on record. The Civil Judge, Junior Division, Gadhinglaj rejected that application by his order dated 12th July, 1984.

2. In prosecuting his application dated 23rd April, 1984 the case of the petitioner was that the period of limitation for bringing the heirs on record of the deceased party commenced from the date of the knowledge obtained by the petitioner of the date of death of the deceased party. This contention was negated by the learned Civil Judge. This writ petition reiterated the same point. However, at the time of hearing of this writ petition, though Shri Kapse brought to my notice the decision reported in AIR 1972 Goa 30, Polpoto & others v. Nilkhant Ganba Borkar & another, supporting the contention that limitation begins from the date of the knowledge of the death, he later on conceded in view of other decisions not only of the Goa Court but also of the Supreme Court that the period of limitation commences not from the date of the knowledge of the death of the deceased

party but from the date of death of the deceased party. Shri Kapse, however, urged that the Court should consider the question whether the delay ought to be condoned under the provisions of section 5 of the Limitation Act. There was no application made to the trial Court for condonation of delay. The petitioner had prosecuted his application for bringing the heirs of the deceased party on record only on the footing that the application was not barred by limitation as the period of limitation commenced only from the date of the knowledge, and as pointed out above, such a view, though incorrect, gets the support of the authority of AIR 1972 Goa 30. Since that view is incorrect, in my opinion, the petitioner should be given an opportunity to plead a case for condonation of delay.

3. In the circumstances, the impugned order dated 12th July, 1984 passed by the Civil Judge, Junior Division, Gadhinglaj is set aside.

The trial Court will give a reasonable opportunity to the petitioner to amend his application dated 23rd April, 1984 on the point of making out a case for condonation of delay and then after giving opportunity to the other parties to file their reply, hear the application and dispose of it on merits.

Rule is disposed of as above.

No order as to costs.

Office to send the writ to the trial Court expeditiously.