

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6685 OF 2008

[Arising out of SLP(C) No.2379/2007]

MANORAMABAI & ORS.

.....APPELLANT(S)

Versus

MUNICIPAL COUNCIL, SAONER & ANR.

.....RESPONDENT(S)

ORDER

Delay condoned. Leave granted. Heard learned counsel for the parties.

2. The first respondent Municipal Council, filed a suit for ejectment against three defendants (Shamrao, Dayaram and second respondent). The trial Court decreed the suit. The first defendant filed an appeal and during the pendency of the appeal he died and his seven LRs were brought on record. The first Appellate Court rejected the appeal on 20.2.1993. Aggrieved by the rejection, the LRs of the first defendant filed a second appeal (SA No.92/1993) before the High Court of Bombay. The second appeal was admitted and was pending for more than a decade. No dates of hearing were being given. One of the LRs of the first defendant, namely appellant No.3 before the High Court (Dadasao Shamrao Saoji), died in the year 1996. An application for setting aside the abatement with an application for condonation of delay and an application for bringing LRs of the deceased third appellant were filed in the year 2003. The High Court rejected the applications on

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27.7.2005 as it was not satisfied with the reasons assigned for condoning the delay.

3. Thereafter, the plaintiff (first respondent) filed an application for dismissal of the second appeal on the ground that the appeal having abated in respect of third appellant should be deemed to have abated in regard to all the appellants. The High Court accepted the said contention and dismissed the appeal on 13.12.2006. Feeling aggrieved, the appellants in the second appeal have filed this appeal by special leave challenging the orders dated 27.7.2005 and 13.12.2006.

4. It is evident from the applications filed by the appellant for setting aside the abatement and for bringing the LRs of the third appellant on record, that the other appellants were under the bonafide impression that it was not necessary to bring the LRs of third appellant on record as the other LRs of the deceased first defendant were already on record.

5. The principles relating to condonation of delay and setting aside abatement for bringing LRs of a deceased party on record in a pending second appeal before the High Court where the second appeal has been admitted but no dates of hearing were fixed, have been stated by this Court in *Perumon*

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Bhagvathy Devaswom Vs. Bhargavi Amma (Dead) by LRs & Ors., (2008) 8 SCC 321. Reference can also be made in this behalf in *Ram Nath Sao @ Ram Nath Sahu & Ors. Vs. Gobardhan Sao & Ors.*, (2002) 3 SCC 195. If the said principles are applied, it becomes evident that the delay ought to have be condoned and the application for setting aside abatement ought to have been allowed and the LRs of the third appellant ought to have been brought on record. Accordingly, the order dated 27.7.2005 is set aside and the three applications allowed. The delay is condoned. Abatement is set aside. The appellants are permitted to bring the LRs of deceased third respondent on record. As a consequence, the order dated 13.12.2006 is also set aside.

6. We allow this appeal, accordingly. We request the High Court to expedite the hearing of the appeal which has stood restored to its file as consequence of our order and endeavour to dispose it of within six months.

.....J.
(R.V. RAVEENDRAN)

New Delhi;J.
November 14, 2008. (J.M. PANCHAL)