

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1217 OF 2015

M/s. Krishnakumar Jethabhai	..	Petitioners
vs.		
Nihalchand Nathmalji (HUF) by its Manager & Karta Kalidas Nihalchand & Ors.	..	Respondents

Mr. Nilesh Modi with Mr. Vikram N. Walawalkar i/b. M/s. Rustamji &
Ginwala for Petitioners.
Mr. Lalit V. Jain for Respondent No. 2.

CORAM : M. S. SONAK, J.
DATE: 22 JUNE 2015

P.C. :-

1] This petition challenges order below Exhibit 58 dated 14 January 2015 dismissing the petitioners (original defendant no. 2) application seeking dismissal of the suit as not tenable, mainly on the ground that the same was instituted against a dead person.

2] The impugned order has not completely closed the contention raised by and on behalf of the petitioners. The impugned order only records that notice no. 211 of 1994 seeking deletion of the original defendant no. 1 and substitution of the names of his legal heirs, is, till date, pending consideration, application seeking dismissal of the suit is liable to be rejected at this stage.

3] In the aforesaid circumstances, it cannot be said that there is any jurisdictional error or for that matter failure to exercise jurisdiction in the matter of making of the impugned order. In case, notice no. 211 of 1994 is allowed, then obviously there would arise no question of dismissal of the suit as untenable. All that the impugned order has done is to decline the entertainment of the petitioners application at a stage when notice no. 211 of 1994 is pending consideration. The contention that since the petitioners had filed its application at Exhibit 56 prior in point of time, the same ought to have been decided, even before notice no. 211 of 1994 is taken up for consideration, is misconceived. Ultimately, it must be remembered that procedure is the hand maid of justice. If the Small Causes Court adopts a procedure which is fair, reasonable and avoids multiplicity, the same cannot constitute either failure to exercise jurisdiction or some material irregularity.

4] The learned counsel for the petitioners placed reliance upon decisions of the *Shipping Corporation of India Ltd. vs. Machado Brothers & Ors.*¹, in which it has been held that subsequent events can be brought to the notice of the Court and based thereupon, the Court can dismiss the suit as having become infructuous. The fact situation in the said decision, affords no parallel whatsoever to the fact situation in the present case. Until, notice no. 211 of 1994 is

1 AIR 2004 SC 2093

decided, there really arises no occasion to grant any relief in the petitioners' application under Exhibit 58.

5] In the aforesaid circumstances, there is no reason to entertain the present writ petition. This petition is accordingly dismissed. However, it is clarified that nothing contained in the impugned order or for that matter in the present order ought to affect or influence the decision of the Small Causes Court in the matter of decision of notice no. 211 of 1994.

6] The learned counsel for the petitioners seeks stay upon the order made today, on the ground that the petitioners would like to take recourse against the same before the Hon'ble Apex Court. Considering that the suit is of the year 1978 and further, directions have been issued to dispose of the same within six months from today, it is unlikely that the suit would be disposed of within a period of six weeks, which is the period, the learned counsel for the petitioners seeks to approach the Hon'ble Apex Court.

(M. S. SONAK, J.)