

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2374 OF 2015
WITH
CIVIL APPLICATION NO. 622 OF 2015

Shri. Ram H. Vazirani and anr. .. Petitioners

vs.

Shri. Prakash K. Vazirani
(since deceased through LRs) .. Respondent

Mr. Clive D'souza i/b Mr. Madhusudan B. Josi for the Petitioners.
Ms Sunita Sonawane for Respondent.

CORAM : M. S. SONAK, J.

DATE : 15 April, 2015.

P.C. :-

1] Not on board. Upon production, taken on board.

2] This petition challenges the order dated 19 November 2013, by which the learned City Civil Judge has condoned the delay of about one year and five months in bringing legal heirs of the deceased plaintiff on record.

3] The learned counsel for the petitioners submits that the suit in the present case, is against a gratuitous licencees. Therefore, according to the decision of the Full Bench of this Court such a suit will not be maintainable before the City Civil Court. Such issue was

raised, but the same is not at all been decided in making the impugned order. Further the learned counsel submitted that in this case, no sufficient cause was made out for condoning the delay in bringing legal heirs of the deceased plaintiff on record.

4] Having heard the learned counsel for the parties and perused the record, in my judgment, no case is made out to interfere with the impugned order.

5] In so far as the objection to the jurisdiction of the Court is concerned, the learned City Civil Judge has rightly observed that this was not an appropriate stage to consider the same. In fact, the impugned order states that such issue can be considered at the relevant stage, once a preliminary issue in this regard is framed.

6] In so far as the condonation of delay is concerned, the cause shown by the legal representatives does not appear to be either *mala fide* or intended to protract the proceedings. The suit was originally pending before this Court and has been transferred to the City Civil Court on account of change in limits of pecuniary jurisdiction. In these circumstances, the impugned order holds that certain steps

were required to be taken, may have been omitted. Further the impugned order records that the legal representatives are the ladies and there is no reason to doubt their statements that they were unaware of the procedural formalities in the matter of bringing themselves on record.

7] This is a case where the learned City Civil Judge has exercised discretion positively to condone the delay. As has been held by the Hon'ble Apex Court, in case of *N. Balakrishnan vs. M. Krishna Murthy* – (1998) 7 Supreme Court Cases 123, that in a situation where a Court has exercised its discretion positively and condoned the delay, such exercise of discretion should normally not be disturbed by the Higher Court unless the discretion has been exercised arbitrarily or capriciously. This is not a case where it can be said that the discretion has been exercised in an arbitrary and capricious manner.

8] Accordingly, no case is made out to interfere with the impugned order. This petition is dismissed. There shall be no order as to costs.

9] In view of dismissal of the main petition, Civil Application No. 622 of 2015 does not survive and is accordingly, disposed of.

(M. S. SONAK, J.)