

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5290 OF 2015

Ashikali D. Shivani

(since deceased through Lrs.)

1a. Dilshad A. Shivani and ors.

.. Petitioners

vs.

Habib D. Shivani and anr.

.. Respondents

Mr. S.M. Railkar for the Petitioners.

Mr. Nachiket Khaladkar for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 31 JULY 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The Trial Court had permitted the defendants by order dated 3 January 2015 to amend the written statement. The order was conditional, in the sense three days time was granted to carry out the amendment, failing which leave was to automatically vacate. Accordingly, the order stood vacated on 6 January 2015.

3] On 14 January 2015, i.e., within eight days, the defendants applied for enlargement of time to carry out the amendment to the written statement. The Trial Court, by order dated 14 January 2015

has rejected the application by observing that it has become '*functus officio*'.

4] The learned counsel for the respondents defended the impugned order by contending that since the application for enlargement of time had been made after the order dated 3 January 2015 had worked itself out, the same was not maintainable and there is no jurisdictional infirmity in the view taken by the Trial Court.

5] The impugned order is required to be interfered with. Under Section 148 of the Code of Civil Procedure, 1908 (CPC), where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, not exceeding thirty days in total, even though the period originally fixed or granted may have expired. Clearly, in view of such provision, the Trial Court could not have declined to exercise discretion by observing that it has become *functus officio*.

6] Further, if the application at Exhibit-267 is perused, then it is clear that sufficient cause had been shown for delay of eight days in amending the written statement.

7] Accordingly, the impugned order dated 14 January 2015 is set aside. By ad-interim order, the petitioners were granted leave to carry out the amendment, which amendment has since been carried out.

8] Rule is made absolute to the aforesaid extent. Since the petitioners have already deposited costs of Rs.5000/- before the Trial Court, the respondents are at liberty to withdraw the same.

(M. S. SONAK, J.)

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