

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5182 OF 2014

Mr. Kenneth Ivan Khan and Anr.] ... Petitioners

Versus

M/s. Tata Sons Ltd. and Ors.] ... Respondents

Mrs. Z. S. Irani for Petitioners.

CORAM :- M. S. SONAK, J.
DATE :- AUGUST 03, 2015

P. C. :-

1. This petition challenges order dated 12/02/2014, by which the Small Causes Court has permitted the legal representative of Defendant No.1 to be brought on record and further, directed the correction of cause-title insofar as Defendant No.1 is concerned, from Mr. Dilara Khan to Mrs. Dilara Khan.

2. Mrs. Z. S. Irani, learned Counsel for Petitioners, submitted that the impugned order is without jurisdiction because in the year 2001 and 2002, similar applications had been made and the same were dismissed. Further, Mrs. Irani points out that one of the legal heirs i.e. the sister of the Petitioner, is yet to be served in the proceeding. Finally, Mrs. Irani points out that the amendment or rather, the bringing of legal heirs of deceased Defendant No.1 on

record was barred by limitation and therefore, the same could not have been permitted.

3. Having heard the learned Counsel for Petitioner and perused the record, there is no case made out to interfere with the impugned order. The impugned order is neither vitiated by any jurisdictional error nor can it be said that the discretion has been exercised arbitrarily. All that the impugned order permits is the bringing of legal representative of deceased Defendant No.1 and for consequential amendment. The applications made in 1991 and 2002 were mainly dismissed on account of non-prosecution or non-payment of costs. In a matter of this nature, the Courts, are required to construe the situation liberally. When technical considerations are pitted against substantive justice, it is the latter which is to be preferred. There is sufficient explanation furnished and the exercise of discretion cannot be said to be vitiated.

4. Insofar as the amendment to the cause-title is concerned, the same was in the context of the Petitioner himself pointing out the correct position. There is sufficient explanation with regard to service upon Ms. Lena Khan.

5. For all the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)