

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 11079 OF 2014

Dilip B. Lonkar

.. Petitioner

vs.

Shri. Jagannathgir G. Girgosavi and ors.

.. Respondents

Mr. T.D. Deshmukh for the Petitioner.

Mr. Sandeep Phatak for Respondent Nos.1,2,4 to 6.

CORAM : M. S. SONAK, J.

DATE : 1 April, 2015.

P.C. :-

1] Rule. Mr. Sandeep Phatak, learned counsel submits that on basis of telephonic instructions, he had put in appearance on behalf of respondent Nos.1 to 6. Further respondent Nos.1 to 6, have thereafter neither contacted him nor dispatched any Vakalatnama in his favour. Accordingly, Mr. Sandeep Phatak states that he is not in a position to appear in the matter today.

2] Learned counsel for the petitioner submits that the notices have duly been dispatched to all the respondents, though presently, Registered A.D. acknowledgment has not yet been received. The circumstance that respondent Nos.1 to 6 had contacted Mr. Phatak indicate that they have been served in the matter. Same is the position with regard to respondent No.7, to whom notice has duly been dispatched.

3] Considering the issue involved and the circumstance that the notice for final disposal was already issued on 26 February 2015, this petition is taken up for final disposal.

4] The petitioner is the plaintiff in Special Civil Suit No.731 of 2007. The original defendant No.3 expired on 16 November 2010. Upon the petitioner acquiring knowledge, the petitioner applied on 3 May 2012 for setting aside the abatement, if any, and bringing the legal heirs of deceased defendant No.3 on record. The application for condonation of delay was also filed alongwith. One of the contesting defendants, i.e., defendant No.4 recorded his no objection in the matter. However, the learned Civil Judge by order dated 20 November 2012 has rejected the petitioner's application on the ground that the cause shown in the application seeking condonation, is cryptic.

5] The impugned order is required to be set aside. This is because the application for condonation of delay states that the same was moved within reasonable time from the date when the petitioner acquires knowledge about demise of defendant No.3. None of the defendants contested the cause shown in the application seeking condonation of delay. In fact, one of the defendant recorded his no objection in the matter. At the highest, learned Civil Judge, could have imposed some costs upon the petitioner.

6] Accordingly, the impugned order is set aside. The delay in seeking setting aside of abatement and bringing heirs of deceased defendant No.3 on record is condoned. The petitioner is permitted to bring on record the heirs of deceased defendant No.3. Necessary amendment to be carried out within a period of four weeks from today. The petitioner to pay costs of Rs.5,000/- in favour of respondents. Such costs shall be deposited in the Court of learned

Civil Judge and thereafter the respondents would be at liberty to withdraw the same proportionately.

7] The petitioner to appear before the learned Civil Judge on 15 April 2015 at 11.00 a.m., alongwith an authenticated copy of this order.

8] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

9] All parties to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

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