

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5065 OF 2014

Smt. Kusum w/o Rampal Gupta .. Petitioner
vs.
Dhanpati M. Gupta and anr. .. Respondents

Mr.H.P. Pandey for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 28 SEPTEMBER 2015.

P.C. :-

- 1] Mr. H.P. Pandey, learned counsel for the Petitioner, files an affidavit of service.
- 2] By the order dated 3 July 2015, it was made clear that this matter will be disposed of finally, at the stage of admission itself.
- 3] The challenge in this petition is to the order dated 11 October 2013, by which the City Civil Court has dismissed the Special Civil Suit No. 6560 of 2000 as abated and assigned the records and proceedings to the record department.
- 4] Considering the issue involved, the Petitioner is not relegated to avail the alternate remedy.

5] The suit was initially initiated by Smt. Dhanpati Mithalal Gupta, mother of the Petitioner. Upon her demise on 2 September 2010, the Petitioner by Chamber Summons No. 702 of 2010 applied for to being brought her on record. The Chamber Summons was allowed on 28 March 2013. However, the Petitioner failed to carry out the actual amendment to the cause title.

6] Thereafter, Mr. Avadh Narayan Dukharam Gupta (Avadh Gupta) expired on 15 April 2013. The Petitioner then did not take any steps for bringing on record the legal representatives of Avadh Gupta. The Petitioner points out that she could have taken such steps, unless the time for carrying out amendment to bring herself on record had been extended.

7] No doubt, the Petitioner has been negligent in the matter. However, there is some explanation on record that the Petitioner had to leave for her native place and reside there for a period of four months, in order to sort out certain domestic issues. In these circumstances, subject to payment of costs would be appropriate if yet another opportunity is granted to the Petitioner.

8] Accordingly, the S.C. Suit No. 6560 of 2000 is restored to the file of City Civil Court. The Petitioner is permitted to come on record as legal representative of the original Plaintiff. Necessary amendment to be carried out within a period of two weeks from today.

9] Upon the Petitioner coming on record, the Petitioner is at liberty to apply for setting aside of abatement and bringing on record the legal representatives of Defendant Mr. Avadh Gupta. The period spent from 28 March 2013 till date can be considered as spent by the Petitioner for bonafide purposes. In case, the City Civil Court decides to set aside the abatement and permits for bringing on record the legal representatives of Mr. Avadh Gupta, the City Civil Court to consider imposition of substantial costs.

10] For the moment, however, the suit is restored and the Petitioner is permitted to bring herself on record. The Petitioner has already deposited an amount of Rs.5,000/- towards security of costs, the Registry to transmit the said amount to the City Civil Court in the account of S.C. Suit No. 6560 of 2000.

11] The legal representatives of Defendant, if and when brought on record, will be at liberty to withdraw the same unconditionally.

12] The petition is disposed of in the aforesaid terms.

13] All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)

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CERTIFICATE

**“Certified to be true and correct copy of
original signed Judgment/Order.”**