

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5478 OF 2015

Rajesh L. Thakkar	..	Petitioner
vs.		
Madhav P. Kamath (since deceased) deleted Narayan P. Kamath & Ors.	..	Respondents

Mr. P. B. Kulkarni for Petitioner.

CORAM : M. S. SONAK, J.
DATE : 16 JULY 2015

P.C. :-

1] The challenge in this petition is to the order dated 17 February 2015, by which legal representatives of the original plaintiffs as well as some of the defendants have been permitted to be brought on record. The learned counsel for the petitioner states that no proper procedure was followed, before the impugned order was made. In particular, the learned counsel for the petitioner submits that there was neither any relief applied for to set aside the abatement nor as such relief been granted. The learned counsel for the petitioner further points out that even after the impugned order has been made, the suit is proceeding without any notice to the legal heirs.

2] Having heard the learned counsel for the petitioner and perused the record, in my judgment, there is no necessity to interfere with the impugned order. The suit is of the year 1978. The impugned order recites the circumstances in which leave has been granted to bring on record legal representatives of the deceased plaintiff as well as some of the defendants. The delay in filing application for seeking leave has been explained and the same has also been condoned. All this implies that abatement, if any, has been set aside, although, there is no statement in the impugned order that the same has in fact been set aside. Accordingly, there is no jurisdictional error in the making of the impugned order. However, there does appear to be substance in the contention of the learned counsel for the petitioner that the suit ought not to proceed any further, unless due notice is served upon the legal heirs / legal representatives who have now been brought on record.

3] Accordingly, although the impugned order is not being interfered with, the learned trial Court is directed to ensure that due notices are served upon the legal heirs / legal representatives who have been permitted to be brought on record by the impugned order dated 17 February 2015 and only thereafter, the suit proceeds.

- 4] With the aforesaid observations, this petition is disposed of.
- 5] All concerned to act on basis of an authenticated copy of this order.
- 6] The petitioner is directed to produce authenticated copy of this order before the trial Court within a period of two weeks from today.

(M. S. SONAK, J.)

Chandka