

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6214 OF 2015

M/s Perfect Realtors

Petitioners

Vs

1. Shri Gana Janu Tambade,
through his Legal
Representatives :
1A) Mrs Yamuna Gana Tambade
and Ors.

.. Respondents

Mr. Mahesh V. Vishwakarma, Advocate for the petitioners.
Mr. Rahul R. Pandit a/w Premanand Torane, Advocate for
respondents no. 1 and 2.

CORAM : R.G.KETKAR,J.
DATE : 07/07/2015

PC:

1. Heard Mr. Mahesh Vishwakarma, learned counsel for the petitioners and Mr. Rahul Pandit, learned counsel for respondents no.1 and 2 at length.
2. Rule. Mr. Pandit waives service on behalf of the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up finally.
3. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the order dated 25.3.2015 passed by the learned Jt. Civil Judge, Sr. Dn, Panvel below Exhibits 41 and 44 in Special Civil Suit No. 373 of 2008. By that order, the learned trial Judge allowed Applications Exhibits 41 and 44 and thereby legal representatives of defendants 1 and 2

were brought on record. The plaintiff was directed to carry out necessary amendment.

4. In support of this Petition, Mr. Vishwakarma invited my attention to application Exhibit 41 filed on 8.10.2014. In that application, it is set out that defendant no.1 died on 20.10.2009 leaving behind his widow Yamuna Ganu @ Gana Tambade. Application at Exhibit 44 is filed on 21.1.2014 for bringing legal representatives of defendant no.2 on record. It is set out therein that defendant no.2 died on 17.3.2011 leaving behind his widow Suman Kana Tambade and sons - Pradeep Kana Tambade, Prashant Kana Tambade, Pritam Kana Tambade.

5. Mr. Vishwakarma submitted that in these applications no prayer was made for setting aside abatement as also no prayer was made for condoning delay. By the impugned order, the learned trial Judge allowed the applications. He submitted that Advocate for the plaintiff was not heard. Apart from that, he submitted that the plaintiff has taken out the application under Order 22 Rule 4 of C.P.C. praying for exemption to bring legal representatives of defendants no. 1 and 2 on record. The said application was filed on 30.9.2013. Without deciding that application first, the learned trial Judge disposed of Application at Exhibit 41 filed on 8.10.2014 and Application at Exhibit 44 filed on 21.1.2015. For all these reasons, he submitted that the impugned order cannot be sustained.

6. Mr.Pandit submits that in the Applications Exhibits 41 and 44 no prayer for condonation of delay as also for setting aside abatement was made. He also did not dispute that application made by the plaintiff under Order 22 Rule 4 on 30.9.2013 is pending. He further states that defendants 1 and 2 will amend Applications Exhibits 41 and 44 by incorporating sufficient cause for not filing applications within the prescribed period as also for setting aside abatement.

7. In view thereof, the impugned order deserves to be set aside and Petition is disposed of in the following terms:-

(i) Impugned order dated 25.3.2015 is set aside and Applications Exhibits 41 and 44 are restored to the file of the trial Court.

(ii) Defendants no.1 and 2 are granted leave to incorporate grounds for condoning delay as also prayers for condoning delay and for setting aside abatement.

(iii) Learned trial Judge will decide Applications Exhibit 41 and 44 afresh along with Application Exhibit 37. All contentions on merits are expressly kept open. Rule is made absolute in the above terms with no order as to costs. Order accordingly.

(R.G.KETKAR, J.)