

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2237 OF 2010
IN
WRIT PETITION NO. 2804 OF 1995

Aditya Rajan Pancholy alias
Nirmal Rajan Pancholy & ors. .. Applicants/org.Petitioners

vs.
Smt. Tarabai V. Hate & ors. .. Respondents

Mr.PK. Dhakephalkar, Sr. Advocate a/w. Mr. N.C. Parekh, Mr. Dharampal Dave, Mr. Nirav i/b Mansukhlal Hiralal & Co. for the Applicants/org. Petitioners..

Mr. Sameer Vaidya for Respondent Nos.4(a) & 4(b).

Mr. M. S. Bhandari i/b Ms. Pranjali Bhandari for Respondent No.9.

CORAM : M. S. SONAK, J.

DATE : 23 JUNE 2015.

P.C. :-

1] Mr. Dhakephalkar, learned senior advocate appearing for the applicants. Mr. M.S. Bhandari, learned counsel appearing for respondent No.9 and Mr. Sameer Vaidya appearing for respondent Nos.4(a) and 4(b).

2] Mr. Dhakephalkar, states that all the respondents have been duly served and necessary affidavit of service is already filed on record.

3] This application seeks recall of order dated 26 July 2010 dismissing Writ Petition No.2804 of 1995 as abated. The order

dated 26 July 2010 records that original respondent No.1, who was the only contesting respondent had died on 9 June 1997 and since no steps were taken to bring legal heirs on record for more than 12 years, writ petition stands dismissed as abated.

4] In the application and the affidavit accompanying the same, explanation attempted to be offered for the delay in taking steps to bring on record the legal representatives of deceased respondent No.1. There appears to be no dispute that respondent No.1 expired on 9 June 1997. This fact was known to the applicants/petitioners at least on 21 October 1997 when a letter was addressed to the advocate for the respondents seeking disclosure of names of legal representatives of the said deceased respondent No.1. On 22 October 1997, advocate purporting to represent the estate of deceased respondent No.1, replied that as per the Will left behind by respondent No.1, the entire estate has been bequeathed to Vijaykumar V. Hate (respondent No.9). An application was made on 8 January 1998 in this Court, seeking directions to said Vijaykumar Hate to disclose names of legal heirs of deceased respondent no.1. The aforesaid application, which was numbered as Civil Application. No. 214 of 1998 was withdrawn on 12 January 1998 with liberty to

file fresh application. For a period of 10 years, however, no fresh application was made either reviewing the request in Civil Application No.214 of 1998 or in order to bring on record the legal heirs of respondent No.1.

5] On 16 August 2008, the original petitioner expired and steps were taken to bring on record his legal representatives. The orders to this effect were made on 23 January 2009. Thereafter some of the legal representatives of the original petitioner expired and once again steps were taken to bring their legal representatives on record. All these while, it does not appear that any objection was raised by and on behalf of the advocates appearing for the respondents that the petition had abated for failure to take steps to bring on record the legal representatives of respondent No.1. This Court also proceeded on the basis that there is no abatement and made orders enabling the legal representatives of the petitioner to be brought on record.

6] On 26 July 2010, when the matter was taken up for final hearing, it was realised that the petition stands abated and accordingly an order was made to the said effect on the said date.

Soon thereafter, i.e., 2 August 2010, the present civil application No.2237 of 2010 was filed seeking restoration. The same has come up for consideration today, not on account of any delay on part of the petitioners, but on account of some difficulties in service of notices upon the proposed legal representatives.

7] As of today, the applicants continue in possession of the suit premises. The suit premises comprise ground floor of a bungalow at Juhu near Isckon, Mumbai. The petitioners pay rent of hardly an amount of Rs.171/- per month in respect of suit premises, which are stated to have an area of about 1000 square feet or thereabouts. Although, no timely steps were taken by the petitioners for the prosecution of Writ Petition No. 2804 of 1995, which is stated to have been abated years ago, the petitioners continue in possession of the suit premises. From the circumstances enumerated earlier, it does appear that the petitioners, their advocate lost the track of the matter and there was lapse in the matter of taking steps to bring on record the heirs of deceased respondent No.1. At the same time, this position was not realised even by the respondents, as no objection in this regard was raised for considerable number of years. This Court also made orders in the meanwhile on the basis that there was no

abatement. If all such circumstances are cumulatively taken into consideration, then the order dated 26 July 2010 can be recalled, subject, however to the payment of exemplary costs by the applicants/petitioners, who have on the basis of pendency of this proceedings and the interim orders therein, continued in possession of the suit premises, notwithstanding the eviction decree made on 15 June 1995. The applicants/petitioners, have offered to pay costs of Rs.10 Lacs to the estate of deceased respondent No.1. This offer, in the facts and circumstances of the present case is appropriate, particularly if one considers that the petitioners have been occupying suit premises from 1995 when the eviction decree was made, paying therefore rent of hardly an amount of Rs.171/- per month. Accordingly, the applicants/petitioners to deposit in this Court and amount of Rs.10 Lacs as volunteered by them, within a period of four weeks from today.

8] The learned counsel appearing of respondent No.9 has submitted that in terms of the Will left behind by deceased respondent No.1, respondent No.9 is the sole executor thereof. The learned counsel relying upon the provisions contained in Section 211 of the Indian Succession Act, 1925 contended that the executor

is the legal representative of the deceased person for all purposes and all the property of deceased person vests in him as such. On such basis, the learned counsel for respondent No.9 contended that if at all the order dated 26 July 2010 is to be recalled, then only respondent No.9 be permitted to be brought on record and not remaining respondents. The learned counsel submitted that there was considerable delay in service of notice in this civil application itself upon the remaining respondents. If therefore, all such respondents are to be made as parties, the final hearing in Writ Petition No. 2804 of 1995 would be delayed further. Besides, learned counsel for respondent No.9 expressed apprehensions that by permitting said respondents to be brought on record in these proceedings, the said respondents may urge some legitimacy to their claim in respect of the estate left behind by deceased respondent No.1.

9] The apprehensions expressed by the learned counsel for respondent No.9 are not really relevant in the context of present proceedings. There may be proceedings pending *inter se* between the parties in relation to the estate of deceased respondent No.1. The mere circumstance that the petitioners-applicants herein are

permitted to bring on record the respondents in this civil application as legal representatives of deceased respondent No.1, can have no effect upon such pending proceeding *inter se* between the parties and said proceedings will have to be decided on their own merits without being influenced by the order which is now made in this present matter. In so far as the apprehension of delay is concerned, the same can always be taken care of by making appropriate orders.

10] Accordingly, and for the reasons as aforesaid, this Civil Application is made absolute in terms of prayer clauses (a), (b) and (c). This is ofcourse subject to the applicants-petitioners depositing in this Court a sum of Rs.10 Lacs as and by way of costs, within a period of four weeks from today. The amount, once deposited should be transferred to the account of Testamentary Suit No. 81 of 1997, which is pending in this Court. The amount shall thereafter abide by any orders made in the said Testamentary proceedings.

11] Since the respondent Nos.4(a), 4(b)and 9 have already appeared in this matter, they waive any further notice insofar as final hearing in Writ Petition No. 2804 of 1997 is concerned. Insofar as remaining respondents are concerned, the applicants-petitioners are

permitted to effect private service upon them. In addition to such private service, the petitioners-applicants are directed to effect substituted service upon the said respondents, by way of publication in Free Press Journal and Navshakti. Necessary affidavit of service to be filed in the Registry. Consequent upon restoration of Writ Petition NO. 2804 of 1995, the same is to be posted for final hearing peremptorily on 7 August 2015 at 3.00 p.m. The applicants-petitioners to ensure that service upon unserved respondents is complete by the said date. The necessary amendment in the matter of bringing on record legal representatives to be carried out within a period of one week from today. If however, costs as volunteered are not deposited, the petition to stand dismissed as abated in terms of order dated 26 July 2010, which would revive.

12] Civil Application is disposed of in the aforesaid terms.

(M. S. SONAK, J.)

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