

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7802 OF 2014

Prasad A. Karandikar	..	Petitioner
VS.		
Indira V. Ghogale & Ors.	..	Respondents

Ms Varsha Palav i/b. The Laureate for Petitioner.
Ms Shreya Deshpande i/b. Kaikini Phadke & Associates for
Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE : 08 JULY 2015

P.C. :-

1] This petition challenges the order dated 31 July 2014, by which the respondent nos. 1 and 2 have been permitted to come on record as the legal heirs / legal representatives of the deceased appellant Mr. Suresh R. Angane in appeal no. 7 of 2011 in RAE & R Suit No. 605/1110 of 2004 pending before the appellate bench of the Small Causes Court. The impugned order, makes it clear that all the contentions of the present petitioner, who has been impleaded as the respondent no. 1 in the said appeal have been kept open to be raised at the stage of final hearing. Accordingly, this is sufficient to decline entertainment of the present petition.

2] Nevertheless, the learned counsel for the petitioner has submitted that the respondent nos. 1 and 2 are virtually strangers

qua the suit premises and in any case, the so-called claims of the respondent nos. 1 and 2 have already been negated. Accordingly, the learned counsel submits that the respondent nos. 1 and 2 ought not to have been permitted to come on record and prosecute appeal no. 7 of 2011. The learned counsel also points out that appeal no. 7 of 2011 can be taken up for consideration only after the delay in instituting the appeal is condoned. The application seeking condonation of delay has already been dismissed on 19 November 2005. What is now pending is application seeking condonation of delay in applying for recall of order dated 19 November 2005. In these circumstances, the learned counsel for the petitioner points out that there was no question of permitting the respondent nos. 1 and 2 to be brought on record in the main appeal itself.

3] In so far as the later contention of the learned counsel for the petitioner is concerned, the same is well taken. As of now, appeal no. 7 of 2011 stands dismissed, because the same was instituted beyond the prescribed period of limitation and the application seeking condonation of delay came to be dismissed for default on 19 November 2005. What is pending therefore, is the application made on 5 December 2007 seeking recall of order dated 19 November 2005. This application was initially made by Mr. Suresh R. Angane, the appellant in appeal no. 7 of 2011. Mr. Suresh R.

Angane, has since expired. The application made by the respondent nos. 1 and 2 on 30 September 2011, can therefore mean and imply their request to be brought on record in the application dated 5 December 2007. Accordingly, the impugned order means permission for the respondent nos. 1 and 2 to come on record to prosecute the application dated 5 December 2007 initially made by Mr. Suresh R. Angane in appeal no. 7 of 2011. If only such application is granted and delay is condoned that the occasion would arise for respondent nos. 1 and 2 to prosecute the main appeal.

4] There is however, no reason to interfere with the impugned order. All that the impugned order has done is to permit the respondent nos. 1 and 2 to come on record and avail of the opportunity to pursue the application dated 5 December 2007. The respondent nos. 1 and 2 are not really strangers to the suit premises. The original proceedings were initiated against the unknown legal heirs of the original tenant Mr. R. B. Angane and Mr. Suresh R. Angane. Exparte decree was made on 8 February 2005 against the unknown legal heirs as well as Mr. Suresh R. Angane. The respondent no. 1 claims to be the daughter of the original tenant Mr. R. B. Angane and the respondent no.2 claims to be his grand-son. No doubt, the respondent nos. 1 and 2 had also

obstructed the execution and the obstructionists notice taken out by the petitioner herein has been made absolute. Warrant of possession was also issued and the same stands executed as against the said respondents.

5] Therefore, the petitioner here will be entitled to raise the objections with regard to the status and claims of the respondent nos. 1 and 2. However, that by itself, is no reason to shut out the respondent nos. 1 and 2 from even being brought on record to pursue the pending proceedings. Obviously, the claims of such respondents will be considered by the appellate bench on its own merits. The petitioner will also be entitled to raise all objections in that regard.

6] With the aforesaid observations therefore, the present petition is dismissed. There shall be no order as to costs.

7] It is clarified that this Court has not gone into the merits of the matter and accordingly all contentions of parties are kept open for decision by the appeal Court.

(M. S. SONAK, J.)