

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 867 OF 2014
IN
CIVIL APPLICATION NO. 342 OF 2011
IN
WRIT PETITION NO. 302 OF 1997

Late Laxmichand Ratanchand Shah
since deceased through his legal
heirs Smt. Shashikala L. Shah & Anr. .. Applicants
In the matter between :
Late Kalyan Ratanchand Shah,
through his legal heirs
Smt. Rajani K. Shah & Ors. .. Petitioners
VS.
M/s. Sheshmal Dhiraji & Ors. .. Respondents

Mr. Ronak Shah for Applicants.
Mr. S. G. Surana for Respondent Nos. 1a and 1b.

CORAM : M. S. SONAK, J.
DATE : 10 AUGUST 2015

P.C. :-

1] This civil application is taken out by the legal representatives of Laxmichand Ratanchand Shah, who was originally impleaded as petitioner no. 2 in writ petition no. 302 of 1997.

2] Upon the demise of the petitioner no. 1, civil application no. 342 of 2011 was taken out by the legal representatives of the deceased petitioner no. 1. The same was allowed by order dated 21 February 2011, which reads thus :

"CORAM : D. G. KARNIK, J.
DATE : 21st FEBRUARY, 2011

P.C.:-

1 Heard the learned counsel for the parties. Learned

counsel for the respondent has no objection for condonation of delay and bringing on record the legal representatives.

2 Hence the application is allowed in terms of prayer clause (ii), (iii) and (iv). It is clarified that the deletion of petitioner no. 2, as prayed for by way of clause (iii) is allowed at the risk of the applicants / respondents.”

3] By this civil application, the legal representatives of original petitioner no. 2 who is stated to have expired on 30 March 2006, seek to come on record in writ petition no. 302 of 1997.

4] The learned counsel for the applicants submits that the relationship between the legal representatives of original petitioner no. 1 and petitioner no. 2 is strained. The legal representatives of petitioner no. 1 applied vide civil application no. 342 of 2011 to bring themselves on record. Further, despite full knowledge that the original petitioner no. 2 had expired on 30 March 2006, did not apply for bringing on record the legal representatives of deceased petitioner no. 2. Rather, application was made for deletion of petitioner no. 2. Upon knowledge of the order dated 21 February 2011, the present application has been taken out on 23 September 2013. In such circumstances, the learned counsel for the applicants submits that there is not only sufficient cause for condonation of delay and setting aside of abatement, if any, but further, there is sufficient cause to modify the order made on 21

February 2011 in the context of unilateral deletion of name of the petitioner no. 2, who in any case, had expired on the date when the order came to be made.

5] Mr. Surana, the learned counsel for the respondents has tendered affidavit in reply to oppose grant of any relief in civil application no. 867 of 2014. Mr. Surana contends that the name of the petitioner no. 2 stands struck of vide order dated 21 February 2011 and therefore the so-called legal representatives of original petitioner no. 2 have no *locus standi* to take out any civil application as the present one. Mr. Surana submits that the petition was filed jointly and it is at the behest of the petitioners that the name of the petitioner no. 2 was struck of from the array of parties. This constitutes clear waiver and the attempt on the part of the legal representatives of deceased petitioner no. 2 to come on record, is untenable. In any case, Mr. Surana points out that since the petitioner no. 2 expired on 30 March 2006 there is gross and inordinate delay and for condonation of which, no sufficient cause has been shown.

6] Upon hearing the learned counsel for the parties and perusing the record, it appears that the legal representatives of the petitioner no. 1, despite full knowledge about the demise of

petitioner no. 2 took out civil application no. 342 of 2011 to bring themselves on record and further, to seek the deletion of the name of the petitioner no. 2. At the stage when the order dated 21 February 2011 was made, the petitioner no. 2 had already expired. Accordingly, the order deleting the petitioner no.2 from the array of petitioners, cannot bind the legal representatives of the petitioner no. 2 who were not issued any notice, at that stage.

7] That apart, the legal representatives of the petitioner no. 2, in paragraph 3 of the present civil application have stated that they came to know that of the order dated 21 February 2011, only some time prior to taking out present civil application. In the lengthy affidavit in reply filed on behalf of the respondents on 23 March 2015, there is no serious contest with regard to this position. There is already on record an order dated 13 April 2012, in which, this Court has held that the provisions of Order XXII are not strictly applicable to writ petitions. As such, there is no question of applicability of law of limitation as such. The question of delay and laches is however not irrelevant. In the present case there is sufficient cause shown by the applicants explaining the delay. Besides, this is clearly not a case of laches because the petition is very much pending and the circumstance that it may be pursued by two parties instead of one, is hardly a circumstance which would

sound in the arena of laches. There is a distinction between delay and laches. Laches is not a mere physical running of time. In order to non suit any party on the point of laches, it is important that the objecting party pleads and establishes that some corresponding rights have accrued on account of the inordinate delay. In this case, there are neither any pleadings in the affidavit in reply to this effect nor would circumstances bear out any such case.

8] Accordingly, a case is made out by the applicants herein to bring themselves on record in writ petition no. 302 of 1997. However, since it is the case of the applicants that their relationship with the legal representatives of original petitioner no. 1 is strained, it will not be appropriate if the applicants are permitted to be arrayed as petitioners in the present petition. The proper order in the facts and circumstances of the present case would be to permit the applicants to be brought on record as the legal representatives of deceased petitioner no. 2, but be arrayed as respondents in the writ petition. No doubt, in their capacity as respondents, they will be at liberty to challenge the orders impugned in the writ petition and in case they are successful in such challenge, then the reliefs can also be suitably molded in their favour. This is necessary, as the legal representatives of deceased petitioner no. 2 seeks representation by a separate lawyer.

9] Accordingly, for the aforesaid reasons, the delay, if any, in seeking setting aside of abatement (if any) consequent upon the demise of petitioner no. 2 is condoned. The abatement, if any, is set aside. The applicants are permitted to come on record in writ petition no. 302 of 1997. The applicants shall however be arrayed as respondents. Subject to the aforesaid observations, the applicants shall have the necessary rights and liberty to pursue the challenge against the orders impugned in the petition. The order dated 21 February 2011 in civil application no. 342 of 2011 is also modified in the aforesaid terms.

10] This civil application is disposed of in the aforesaid terms. There shall be no order as to costs.

11] The legal representatives of the original petitioner no. 1 are directed to carry out necessary amendment to the cause title within a period of two weeks from today. In case they fail to do so, then the applicants in the present civil application are at liberty to carry out amendment within a period of two weeks thereafter.

(M. S. SONAK, J.)