

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.156 OF 2013
IN
WRIT PETITION NO.561 OF 2014

Haresh C. Thadhani .. Applicant.
V/s.
Smt. Bhojibai V. Hariramani
& Other .. Respondents.

Mr. A. M. Khandekar i/b. M/s. Tamhane & Co., for the Applicant.

CORAM: M.S.SONAK,J.
DATE : 13th APRIL, 2015.

P.C:-

This Petition is directed against the order dated 28th November, 2013 made by the City Civil Court, Mumbai, allowing the Respondent's Chamber Summons No.1966 of 2011 in Suit No.7485 of 1983 and thereby granting leave to bring on record the legal heirs of deceased Plaintiff, subject to payment of costs of Rs.10,000/- (Rupees Ten thousand only).

2 There is no dispute that Respondents have paid costs of Rs.10,000/- to the Petitioner but the learned Counsel for the Petitioner states that the cheque towards costs has not yet been deposited or encashed by the Petitioner.

3 The learned Counsel for the Petitioner submits that the delay

in the present case was or more than five years. No sufficient cause was shown by the Respondents for condonation of such delay. The learned Counsel for the Petitioner places reliance upon the decision of the Hon'ble Apex Court in the case of *Balwant Singh v/s. Jagdish Singh 2010 (8) SCC 685* and submitted that liberal construction cannot be equated with doing injustice to any other party and the expression "sufficient cause" implies the presence of legal and adequate reasons.

4 Having heard the learned Counsel for the Petitioner and perused the record, there is no reason to interfere with the positive exercise of discretion to condone the delay. In this case, the Plaintiff No.1 expired on 28th December, 1995. In the year 2006, the Plaintiff No.2 had taken out Chamber Summons No.588 of 2006 for bringing on records the legal heirs of Plaintiff No.1. However, the said Chamber Summons was withdrawn on 2nd August, 2007 with liberty to take out a fresh Chamber Summons. On 24th April, 2009, Chamber Summons No.701 of 2009 was taken out by one Mr. Kishu Vensimal Hariramani, as legal heir of deceased Respondent No.1. However, the said Kishu V. Hariramani also expired on 25th August, 2011 and, therefore, the present Chamber Summons No.1966 of 2011 was taken out. The earlier Chamber Summons No.701 of 2009 was disposed of as the same had been rendered infructuous on account of demise of said Mr. Kishu V. Hariramani.

5 If the aforesaid circumstances are taken in the consideration, it cannot be said that Respondents have been either negligent or careless in the matter of bringing heirs on record. In fact, Respondents have taken steps right from the year 2006 and it is only in the aforesaid circumstances that there was delay of five years. The delay, is merely attributable to certain technical defects in Chamber Summons No.588 of

2006. This Court granted leave to withdraw Chamber Summons No.588 of 2006 and permitted the taking out of fresh Chamber Summons. The second Chamber Summons was taken out within reasonable period but had to be aborted on account of demise of Mr. Kishu V. Hariramani. Thereafter, on 1st November, 2011, the present Chamber Summons came to be taken out.

6 In matters of condonation of delay, the length of delay is not in all cases, the most relevant factor. The quality of explanation is more important. In such cases, there is bound to be some lapse on the part of the parties. However, that by itself is not sufficient to deny the parties a hearing on merits. In a situation where the City Civil Court has exercised positive discretion to condone the delay, it is normally not appropriate to interfere, unless it is established that discretion has been exercised arbitrarily. This is the case where it can be said that the discretion has been exercised arbitrarily. Accordingly, no case is made out to interfere with the impugned order. The Apex Court in the case of *N. Balakrishnan v/s. M. Krishnamurthy 1998 (7) SCC 123* has held Section 5 of the Limitation Act does not state that such discretion can be exercised only when the delay is of certain length. Length of delay is no matter, acceptability of the explanation is the only criterion.

7 Therefore taking into consideration the aforesaid legal position as also the facts and circumstances, there is no case made out in entertaining the present Petition.

8 Petition is disposed of. There shall be no order as to costs.

(M.S.SONAK,J.)