

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 493 OF 2014

Ashok Marutrao Ranavare

...Petitioner

vs.

Dhondiram Dnyandev More & Ors.

...Respondents

Mr. Rahul S. Kadam for the Petitioner.

CORAM : R. M. SAVANT, J.

DATE : 23RD FEBRUARY, 2015.

PC. :-

The writ jurisdiction of this Court under Article 227 of the Constitution of India is invoked against two orders, the first order is the order dated 2nd May, 2009 passed by the learned Joint Civil Judge, Junior Division, Indapur, whereby the application Exhibit 21 and 23 filed by the Petitioner/original Plaintiff came to be rejected. The second order is the order dated 22nd July, 2013 whereby the application Exhibit 28 filed by the Petitioner came to be rejected. In so far as application Exhibit 21 and 23 are concerned, they were filed for condonation of delay and for bringing the legal heirs of Defendant No.2 on record. The same came to be rejected by the Trial Court by the said order dated 2nd May, 2009. The reasons mentioned in the said order is that the Defendant No.2 has died on 30th September, 2000. The bailiff's report is dated 18th June, 2008 which discloses that the Defendant No.2 had died 8 years prior to the filing of the Suit and, since, the application was

filed on 20th October, 2008, the Trial Court deemed it appropriate to reject both the applications Exhibit 21 and 23. It is, thereafter, that the Plaintiff filed the instant application Exhibit 28 for review of the said order dated 2nd May, 2009. The Trial Court held that the review jurisdiction could not be invoked against the said order dated 2nd May, 2009 and, accordingly, rejected the said application Exhibit 28.

2] It is required to be noted that the Suit in question has been filed in the year 2008 for injunction against the Defendants amongst whom is the Defendant No.2 who had already expired in the year 2000. However, reading of the plaint discloses that the averments have been made qua the Defendant No.2 in the present tence to show as if the Defendant No.2 was very much alive and he was carrying out construction. It is also required to be noted that assuming that the knowledge of the death of the Defendant No.2 was acquired by the Plaintiff in the year 2008 whether the cause of action would survive against the heirs is a matter to be considered since the Suit filed is one for injunction. Hence, in the light of the aforesaid, the orders passed by the Trial Court i.e. order dated 2nd May, 2009 as also the second order dated 22nd July, 2013 do not merit any interference at the hands of this Court in its writ jurisdiction. The Writ Petition is, accordingly, dismissed.

(R. M. SAVANT, J.)