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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 185 OF 2016

Shri Waliullah Yusuf Mujawar and another ... Petitioner

Vs.

Shri Aziz Maqbul Mujawar

Since deceased through heirs

1A. Shri Abdul Gani Aziz Mujawar and others ... Respondents

Mr.Prajakt M.Arjunwadkar, Advocate for Petitioners.

CORAM : R.G.KETKAR, J.

DATE : 14th JANUARY, 2016

P.C. :

. Heard Mr.Prajakt M.Arjunwadkar, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, legal heirs of original defendant (appellant before the District Court) have challenged the order dated 02/12/2004 passed by the learned Additional District Judge, Sangli below Exhibit 1 in Regular Civil Appeal No. 107 of 1994. By that order, the learned District Judge dismissed the Appeal for want of prosecution.

3. Mr.Arjunwadkar submitted that respondent No.1 Aziz Maqbul Mujawar, since deceased, had instituted Regular Civil Suit No. 259 of 1991 against Yusuf Umar Mujawar- father of present petitioners. The Suit was decreed on 11/01/1994. The learned trial

Judge directed the defendant to bring deed of mortgage and all documents in his possession or power and deliver the same to the plaintiff or to his nominee. Aggrieved by that decision, Yusuf Mujawar instituted Regular Civil Appeal No. 107 of 1994 on 14/02/1994. On 19/08/2000, Yusuf Mujawar expired and his legal representatives were brought on record. The petitioners are appellants No. 2 & 5 in the Appeal.

4. He submitted that by the impugned order dated 02/12/2004, the learned District Judge dismissed the Appeal for want of prosecution after recording that Appeal is very old and was pending for final hearing. Last adjournment was granted subject to costs of Rs.200/- but that costs was also not paid. At the time of hearing of the applications Exhibits 49 and 50, appellants and their advocate were absent. No cause was given for absence of the appellants. The learned District Judge, therefore, dismissed the Appeal for want of prosecution. He submitted that in fact, Yusuf Mujawar had executed power of attorney dated 12/07/1993 in favour of his son – Quresh Yusuf Mujawar (incidentally appellant no. 4). He was looking after the Suit as well as Appeal. In other words, petitioners who are appellants No. 3 & 5 were not looking after the Appeal and therefore, the Appeal deserves to be restored.

5. I have considered the submissions advanced by Mr. Arjunwadkar. I have also perused the material on record. The

learned District Judge dismissed the Appeal for want of prosecution on 02/12/2004. The order reads thus :

“Peruse application Exhibit 49 and 50. Today the appellants and their advocates are absent. No cause given for the absence of the appellants. This appeal is very old and was pending for final hearing. Last adjournment was granted subject to cost of Rs.200/-. But said cost is also not paid. Hence, this appeal is dismissed for want of prosecution.”

6. Mr.Arjunwadkar relied upon power of attorney dated 12/07/1993. It is not in dispute that Yusuf Mujawar died on 19/08/2000. In view thereof, power of attorney came to an end on account of death of the principal. Apart from that by that power of attorney, one of the sons Quresh was appointed as agent of Yusuf. Quresh is appellant No.4 in the Appeal. Even if it is accepted that appellant No.4 was looking after the proceedings, there is no explanation as to why the matter was not attended by him. The Appeal was dismissed in the year 2004 and the present Petition is instituted on 23/12/2015. The Petition suffers from gross delay and latches and no explanation is given for condoning the delay. For all these reasons, no case is made out invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)