

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2013 OF 2016

Mr. Ramniwash Pannalal Somani & Ors. .. Petitioners
Vs.
Mr. Shyamlal Ramnath Lahoti .. Respondent

Mr. G.G. Togani for the Petitioners.

CORAM : M.S. KARNIK, J.
DATED : 15TH OCTOBER, 2016.

P.C.

1 The petitioners by way of this Petition are challenging a common order dated 01.09.2015 passed below Exhibits 57 and 59 in R.C.S. No.200 of 1995 of the trial Court. The petitioners here are the original defendants. The present respondent-Original plaintiff has filed the suit for arrears of rent against the petitioner. During the pendency of the suit, defendant No.2 expired and his legal representatives were not brought on record. The plaintiff was not aware of the demise of defendant No.2. The plaintiff got knowledge of this fact only on 13.01.2015 when the defendant filed his evidence. The defendants never informed the petitioner that the original defendant No.2 had died. The plaintiff is not responsible for this delay, therefore, the plaintiff requested that he may be permitted to bring the legal

representatives of defendant No.2 on record by allowing the application for condonation of delay.

2 The learned trial Court was pleased to allow the applications Exhibits 57 and 59 and the abatement against defendant No.2 is set aside and delay in bringing legal representatives on record was condoned. The plaintiff was permitted to bring the legal representatives of defendant No.2 on record. The trial Court directed the plaintiff to carry out consequential amendment in the plaint.

3 The main grievance of the petitioner is that in absence of application for setting aside the abatement, the application for bringing the legal representatives on record, is not maintainable. In support of his contention he relied upon the decision of the Apex Court in the case of Madan Naik (dead) By Legal Representatives & Ors. vs. Hansubala Devi and Ors. reported in (1983) 3 SCC 15. The learned trial Judge while allowing the applications Exhibits 57 and 59 has relied upon the decision of the Apex Court in the case of Mithailal Dalsangar Singh & Ors. vs. Annabai Devram Kini and Ors. reported in AIR 2003 SC 4244. The learned trial Court while referring to the said decision of the Apex Court has noted that simple prayer for condonation of delay for bringing the legal representatives on record

without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside the abatement. The learned trial Judge has, therefore, observed that merely because the plaintiff has not made specific prayer for setting aside abatement, in exercise of prayer for condonation of delay, the applications cannot be straightway rejected. The learned trial Judge has also taken into consideration that the defendants have not intimated the death of defendant No.2 and, therefore, the delay is satisfactorily explained by the plaintiff. The defendants disclosed the death of defendant No.2 for the first time on 13.01.2015 and the application Exhibits 57 is moved by the plaintiff on 10.02.2015. I do not, therefore, see any reason to interfere with the order passed by the trial Court.

4 The Writ Petition therefore stands rejected with no order as to costs.

(M.S. KARNIK, J.)