

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3755 OF 2016

Nishat Ara widow of Khurshid Ali and others ... Petitioners
Vs.
Abu Sufiyan Rahimulla Shiakh and others ... Respondents

Mr. Mayuresh Khandeparkar i/b. Mr. A. N. Nesarikar for Petitioners.
Mr. Girish S. Godbole, Senior Advocate i/b. Mr. Shishir Pandey for
Respondents No.1 to 3.

CORAM : R. G. KETKAR, J.
DATE : APRIL 18, 2016

P.C. :

Heard Mr. Khandeparkar, learned Counsel for petitioners and
Mr. Godbole, learned Senior Counsel for respondents No.1 to 3 at
length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 27.01.2016 passed by the learned Judge presiding over Court Room No.3 of the Bombay City Civil Court for Greater Bombay in Chamber Summons No.317 of 2011 in Short Cause Suit No.7423 of 1980. By that order, the learned trial Judge rejected the Chamber Summons taken out by defendant No.1-b(c) for filing additional written statement. Defendant No.1 - Haji Mansoor Ali died on 16.06.1981 leaving behind defendant No.1-a Azizunnisa wife of Haji Mansoor Ali and defendant No.1-b Khursheedali, son of Haji Mansoor Ali. They were brought on record on 21.09.1981. Defendant No.1-b Khursheedali died on 07.01.2010. Defendants No.1-b(a) to 1-b(d) were brought on record in pursuance of chamber order dated 25.03.2010. Defendant No.1-b(c) has filed Chamber Summons on or about 25.02.2011 for filing additional written

statement for bringing subsequent events, facts occurred during the pendency of the Suit and change of circumstances during the period of last 30 years during the pendency of the Suit. By the impugned order, the learned trial Judge has rejected the application.

3. Mr. Khandeparkar submitted that defendant No.1 Haji Mansoor Ali had filed written statement. After the death of defendant No.1, defendants No.1-a and 1-b were brought on record. Defendant No.1-b did not file written statement.

4. After arguing the Petition for quite some time, upon taking instructions from petitioner No.3 - Sajid Ali Shaikh, seeks liberty to withdraw this Petition with liberty to take out appropriate proceedings for amending the written statement filed by the defendant No.1.

5. Mr. Godbole submitted that as defendant No.1-b did not file written statement, defendants No.1-b(a) to 1-b(d) are bound by the written statement of defendant No.1. Statement made by Mr. Godbole is recorded.

6. In view thereof, on the motion made by Mr. Khandeparkar, Petition is allowed to be withdrawn and is disposed of with liberty as prayed for. It is made clear that I have not examined merits of the proposed proceedings. All the contentions of the parties are expressly kept open. Mr. Khandeparkar assures that within 10 days from today, petitioners will file appropriate proceedings for amending the written statement of defendant No.1. He submitted that the time spent by the petitioners in prosecuting Chamber Summons may be excluded from the period of limitation. I find that the request made by Mr. Khandeparkar is reasonable. Hence, time spent by the petitioners while prosecuting

Chamber Summons shall stand excluded from the period of limitation.
Order accordingly.

(R. G. KETKAR, J.)

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