

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5228 OF 2010

Abhimanyu Arjun Bile, deceased

1A. Kamlesh A. Bile & Ors. .. Petitioners

vs.

1. Madan K. Masurkar

1A. Dattaram S. Sawant & Ors. .. Respondents

Mr. I. I. Patel for Petitioners.

Mrs. Vaishali Nimbalkar – AGP for State - Respondent No. 18

CORAM : M. S. SONAK, J.

DATE : 20 JUNE 2016

P.C :

1] Heard Mr. Patel for the petitioners.

2] The challenge in this petition is to the order dated 22 June 2010, by which, the MRT has declined leave to the petitioners to bring on record the legal representatives of the respondent no. 3(b), *inter alia* on the ground that the said respondents expired in the year 2000 i.e. almost ten years before the application to bring his legal heirs on record was made.

3] Mr. Patel, the learned counsel for the petitioners has submitted that the respondent no. 3, who is, the father of the respondent nos. 3(a) and 3(b) before the Maharashtra Revenue Tribunal (MRT) expired sometime in the year 2009. Based upon the information imparted by the respondent no. 3(a), the petitioners

brought on record not only the respondent no. 3(a) but the respondent no. 3(b) as well. Further, upon realising that the respondent no. 3(b) had expired in the year 2000, leave was applied to bring on record his legal representatives. Thus construed, Mr. Patel submits that there was really no delay in bringing on record the legal representatives of deceased respondent no. 3(b). Mr. Patel submits that the impugned order warrants interference in as much as the issue has not been appreciated in its proper perspective.

4] Having heard Mr. Patel, the learned counsel for the petitioners, in my judgment, this is not a case which warrants interference. The tenancy application before the MRT was instituted sometime in the year 2001. At the stage of bringing on record the respondent no. 3(a) and 3(b), reasonable diligence was expected from the petitioners. At that stage itself, the petitioners ought to have brought on record the legal representatives of the respondent no. 3(b), since, in the year 2009, the respondent no. 3(b) was not living. There is no dispute that the respondent no. 3(b) has expired way back in the year 2000. There is no explanation in the application seeking leave as to why no due diligence was exhibited at that stage. Accordingly, there is no case made out to interfere with the impugned order.

5] There is yet another disturbing aspect about this matter. As against the impugned order the present petition was instituted in the year 2010. On 16 August 2010, the petitioners obtained ad interim relief in terms of prayer clause (c). By virtue of this ad interim relief, the proceedings in the revision application instituted before the MRT in the year 2001 have been stayed.

6] The registry notings indicate that there were no proper steps taken to serve the respondents in expeditious manner. Such steps were necessary to be taken, particularly because the petitioners had obtained interim relief, without service of notice upon the contesting respondents. The registry notings indicate that the respondent nos. 1 to 3 and 6 are senior citizens. Ultimately on 11 October 2010 further time was granted to the petitioners to effect service but the interim order was directed to operate only till 30 November 2010. Again, the record indicates that no effective steps were taken to effect service. Most of the notings indicate that steps are yet to be taken or that the service is awaited.

7] On 23 June 2011, an order was made requiring the petitioners Advocate to take steps to clear the office objections within four weeks, making it clear that if this is not done, the petition will stand

dismissed as against the respondent no. 5 and unserved respondent no. 14. The notings indicate that no such steps were taken and therefore in terms of the self operation order the petition stood dismissed as against the respondent nos. 5 and 14.

8] On 25 July 2011, this Court noted that the petitioners Advocate was absent on 23 June 2011 and the matter was directed to be placed on the said date. On the said date also, none appeared for the petitioners and therefore the matter was posted to 27 July 2011 for dismissal.

9] On 27 July 2011, the petition was dismissed in default. The ad interim order was vacated forthwith. If the record is perused, it does suggest that even on the said date the ad interim order was not operational.

10] On 6 January 2014, civil application for condonation of delay of over 11 months and 7 days and restoration was allowed.

11] Thereafter, in the years 2014 and 2015 as well, the matter has been adjourned from time to time in the context of service.

12] From the aforesaid, it is quite clear that the petitioners have

succeeded in stalling the proceedings before the MRT in a matter which was instituted by them in the year 2001 for a period of six years, *inter alia* on the grounds of pendency of the present petition. Apart from the impugned order not warranting interference, the petitioners, in view of such conduct, are not entitled to any relief under Article 227 of the Constitution of India.

13] Accordingly, the present petition is dismissed. There shall be no order as to costs.

14] The petitioners to file an authenticated copy of this order before the MRT within a period of two weeks from today. Mr. Patel assures this Court that he will produce authenticated copy of this order before the MRT within a period of two weeks from today. The MRT is directed to dispose of the revision application as expeditiously as possible and in any case within a period of four months from today.

(M. S. SONAK, J.)