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

WRIT PETITION NO.8375 OF 2014

Maruti Kundaji Sawant.

... Petitioner.

V/s.

Karunavati Shankar Giri & Ors.

... Respondents.

Mr. Vishal Kanade a/w. Sanjay Gawde for the Petitioner.

Mr. Suresh Dubey for Respondents 1 to 4.

CORAM : N.M. Jamdar, J.

22 August, 2016.

Oral Order :-

Rule. Rule made returnable forthwith. The learned Counsel for the Respondents waives service. Taken up for disposal forthwith.

2. The Petitioner challenges the order passed by the City Civil Court, Mumbai in Chamber Summons No.1514 of 2013 in Summary Suit No. 649 of 2004 dated 25 April 2014, condoning the delay, allowing the Chamber Summons and setting aside the abatement of the Suit and permitting the Respondents to substitute themselves as Plaintiffs in the Suit.

3. The suit was filed by the father of the Respondents in the year 2004 for recovery of sum of Rs.3,10,000/- from the Petitioner. The Suit was initially filed in this Court and thereafter, was transferred to the City Civil Court, in view of change in pecuniary jurisdiction. The Plaintiff expired on 2 May 2007 and the Chamber Summons was filed by the Respondents in June 2013 for bringing themselves on record. The Chamber Summons was beyond limitation by almost seven years. The application was contested by the Petitioner by filing a detailed reply. The learned City Civil Court Judge, by the impugned order, allowed the Chamber Summons.

4. In the affidavit in support of the Chamber Summons, the Respondents have stated that the Advocate had instructed them that when the matter will come up on board, they will be informed, and it was only recently their Advocate informed them that the Suit is transferred to City Civil Court and the evidence is required to be filed and some time in 15 June 2013 they informed the Advocate about the death of the Plaintiff. In the reply filed by the Petitioner, the Petitioner stated that the Respondent No.3 had filed the Suit No.2375 of 1997 against the Petitioner and in the evidence, the fact that the present suit filed by their father was pending, was acknowledged. According to the Petitioner that there was absolutely no reason for condoning the delay.

5. The delay of seven years cannot be stated to be delay of short duration. The Apex Court has drawn distinction between delay of short duration and delay of inordinate nature and has indicated that different approaches are warranted for these two kinds of delay. In question of delay of short duration, the Court can balance equities by imposition of suitable cost if necessary and in the delay of inordinate nature, the Court has to consider the matter in greater depth, as the rights accrued to the parties upon dismissal of the suit cannot be lightly taken away. In the impugned order there is no discussion at all as to why the delay in the present case needed to be condoned by setting aside the abatement. There is also no discussion at all as regard the reply filed by the Petitioner. In fact, the reply has not even been referred to in the impugned order. Even the exact period of delay is also not specified in the decision. The learned Judge has proceeded to condone the delay as if the delay of seven years needs to be condoned in the matter of routine course.

6. Therefore, in the circumstances, the impugned order is required to be quashed and set aside and the learned City Civil Judge will have to be directed to consider the application filed by the Respondents afresh by giving detailed reasons in the application as to why the delay needs to be condoned by taking into consideration the averments in the application as well as the reply of the Petitioners.

7. Accordingly, the Writ Petition is allowed in terms of prayer clause (a). The Chamber Summons No.1514 of 2013 stands restored to the file. The learned City Civil Court Judge will dispose of the Chamber Summons on its own merits in the light of what is indicated above. The cost of Rs. 2,000/-, if it is accepted by the Petitioner, shall be refunded to the Respondents.

(N.M. Jamdar, J.)