

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3263 OF 2015
IN
WRIT PETITION NO.5472 OF 2000**

Dilip Kumar Parkar & Ors. ..Applicants

In the matter of

Kumar Laxman Parkar (deceased) ..Petitioner

Vs.

**Abdul Majid Ahmed Omerbhoy (deceased)
through LR ..Respondent**

**WITH
CIVIL APPLICATION NO.2776 OF 2015
IN
WRIT PETITION NO.5472 OF 2000**

Kumar Laxman Parkar ..Petitioner

Vs.

Abdul Majid Ahmed Omerbhoy ..Respondent

And

Nadeem Majid Omerbhoy ..Applicant

Mr. S. B. Prabhawalkar for the Applicants in C.A. No.3263 of 2015 and for the Respondent in C.A. No.2776 of 2015

Mr. Shailesh Thakkar a/w Mr. Milind Godse i/b M/s Shailesh Thakkar & Co. for the Applicant in C.A. No.2776 of 2015 and for the Respondent in C.A. No.3263 of 2015

**CORAM : R. M. SAVANT, J.
DATE : 29th FEBRUARY, 2016**

P.C.

1 The above Civil Application No.3263 of 2015, has been filed by the Applicants who are the heirs of the original Petitioner, Kumar Laxman Parkar.

2 The companion Civil Application No.2776 of 2015 has been filed by the son of the original Respondent.

3 The above Writ Petition is directed against the order dated 14-9-2000 passed by the Appellate Bench of the Small Causes Court, by which order the Appeal filed by the Petitioner being Appeal No.77 of 2000 came to be dismissed and resultantly the order dated 22-12-1999 passed in Misc Notice No.569 of 1999 came to be confirmed. By the said order dated 22-12-1999 the application i.e. Misc Notice No.569 of 1999 came to be dismissed by the Learned Judge of the Small Causes Court which was an application filed under Order IX Rule 13 of the Civil Procedure Code. The above Petition was admitted by a Learned Single Judge of this court on 11-10-2000 and ad-interim relief in terms of prayer clause (b) was granted which is in operation in the above Petition.

4 It seems that the original Petitioner, Kumar Laxman Parkar expired on 29-3-2011. In so far as the Respondent is concerned, the original Respondent Abdul Majid Ahmed Omerbhoy has also expired on 11-5-2010. The grant of relief in Civil Application No.3263 of 2015 would impact the relief sought by the Respondent in Civil Application No.2776 of 2015 which relief is to the effect that the Writ Petition be declared to be abated in view of the fact

that the heirs of the original Respondent have not been brought on record. Hence Civil Application No.3263 of 2015 is taken up for consideration before Civil Application No.2776 of 2015.

5 By the said Civil Application No.3263 of 2015, the Applicants i.e. the heirs of the original Petitioner seek to bring themselves on record and also seek setting aside of the abatement of the Petition on the said basis. The sum and substance of the case of the Applicants in the Civil Application is that their father was prosecuting the proceedings in the courts below i.e. before the Learned Judge of the Small Causes Court and thereafter the Appellate Bench of the Small Causes Court and he had also filed the above Writ Petition in this Court and therefore the Applicants who are the heirs were not aware of the said proceedings. The said case of the Applicants is sought to be countered by the Respondent by drawing this court's attention to the recording made in the pleadings in the courts below filed on behalf of the original Petitioner Kumar Laxman Parkar. It has been averred by him in the affidavit in support filed in the application under Order IX Rule 13 that he had made his son Dilip aware of the proceedings and his son Dilip was trying to negotiate a settlement with the Respondent /landlord. A reading of the said averment would therefore indicate that one of the heirs of the said Kumar Laxman Parkar was aware of the proceedings being filed in the courts below, but the said averments cannot be interpreted to mean that they were aware of the above Writ Petition filed in this Court.

6 The case of the Applicants is sought to be countered on the ground that though the death of the Respondent was communicated to the Applicants they have not taken any steps to bring the heirs of the Respondent on record. The said averment is in paragraph 5 of the reply to the above Civil Application No.3263 of 2015. Significantly no material is placed on record to buttress the said case of the Respondent. In fact this Court had granted time to the Learned Counsel Mr. Thakkar to produce the communication if any addressed to the Advocate for the Applicants in that regard. However, Mr. Thakkar today has informed his inability to do so. It is the case of the Applicant that they became aware of the dismissal of the Suit only when Advocates notice in respect of the above Civil Application No.2776 of 2015 was served upon the Applicants in his shop i.e. the suit premises on 15-10-2015. It is thereafter that the Applicants have approached Advocate Mr. Prabhawalkar and have taken steps to file the instant Civil Application. In the light of the fact that the Learned Counsel for the Respondent Mr. Thakkar has not been able to place any material on record to show that the death of the original Respondent has been communicated to the Applicants. The case of the Applicants that they became aware of the above Writ Petition only on 15-10-2015, would have to be accepted. In any event, the above Writ Petition had been admitted and was pending hearing and final disposal. Since the interim relief by way of prayer clause (b) was in operation, it would be just and proper to grant a final indulgence to the Applicants to prosecute the above Petition on merits. However, the same would have to be at

the pains of imposing some conditions on the Applicants. The Learned Counsel Mr. Thakkar appearing on behalf of the Respondent states that the Applicants who are occupants have not paid a single farthing in respect of the premises in question and that the same covers the original Petitioner – Kumar Laxman Parkar. It is the submission of Mr. Thakkar that right from the year 1985 till this date not a single farthing has been paid to the Respondent.

7 Per contra it is the case of the Learned Counsel Mr. Prabhawalkar appearing for the Applicants that the amount has been forwarded to the Respondent in view of the interse disputes between the landlord of the premises in question. However, the Learned Counsel fairly accepts the position that nothing has been paid since the year 1985. It is required to be noted that in view of the death of the original Petitioner on 29-3-2011, the above Petition has stood abated after a period of 90 days from the said date. However, the said date would be the defining date in so far as the imposition of any condition on the Applicants is concerned. The Civil Application No.3263 of 2015 is accordingly allowed in terms of prayer clauses (a) to (c). However, the same would be on the following conditions :

(i) The Applicants to deposit in this Court a sum calculated @ Rs.260/- per month from October 1985 to March 2011. i.e. 293 months = Rs.76180/- and from April 2011 till date @ Rs.5000/- per month X 60 months =3,00,000/-.

(ii) The Applicants would go on depositing @ Rs.5000/- p.m. during the pendency of the above Petition.

(iii) Since the Petition is of the year 2000, the hearing of the above Petition is expedited and is directed to be placed for final hearing after the ensuing summer vacation of the year 2016, to be shown on the weekly board, in the week commencing on 6-6-2016 to be shown at the appropriate place as per chronological order.

(iv) In so far as the amount covered by clause (i) is concerned, the Learned Counsel for the Applicants states that the same would be deposited within 8 weeks from date which would be without prejudice to the right and contentions of the parties.

(v) The Respondent would be at liberty to move an application for withdrawal of the amount which would be considered on its own merits.

(vi) In view of the above Civil Application No.3263 of 2015 being allowed, the relief sought vide Civil Application No.2776 of 2015 filed by the Respondent cannot be granted, the Civil Application to accordingly stand rejected.

(vii) The Applicants to carry out amendment in the Writ Petition so as to bring themselves on record as also to bring the Respondent on record within four weeks from date.

8 Both the Civil Applications are accordingly disposed of.

[R.M.SAVANT, J]