

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

WRIT PETITION NO. 1293 OF 2016

Dr. Vijay Vasudeo Bedekar	... Petitioner
V/s.	
Mr. Parshuram P. Puranik & Ors.	... Respondents

Mr. S. M. Gorwadkar, Senior Counsel u/b Sujay Gangal for the Petitioner.
Mr. Yunus Memon with Navid Memon for the Respondent nos. 2 and 3.

**CORAM : K. K. TATED, J.
DATED : 31/03/2016**

PC.:

. Heard learned Counsel for the parties.

2 By consent of both the parties, matter is taken for final hearing at the stage of admission itself.

3 By this petition, under Article 227 of Constitution of India, the petitioner landlord challenges the order dated 13.06.2012 passed by 9th Joint Civil Judge, Thane below Exhs. 14 & 15 in Regular Civil Suit No. 622 of 2008 rejecting the plaintiff's application for condonation of delay in filing application for bringing legal heirs on record of sole defendant and application for bringing legal heirs on record i.e. Exh.15.

4 In the present proceeding, the plaintiff filed Regular Civil Suit No. 622 of 2008 in the Court of Civil Judge, Thane for possession of the suit premises i.e. premises comprising of two rooms, admeasuring

about 250 sq.ft. of carpet area situated on ground floor of “Narayan Bhuvan” situated at Bedekar Hospital, Maharshi Karve Road, Naupada, Thane 400 602. The sole defendant was tenant of suit premises. During the pendency of the suit, sole defendant expired on 19.04.2009. Hence, plaintiff filed application below Exh.14 on 03.07.2010 for condonation of delay alongwith additional affidavit dated 27.04.2012. The plaintiff also filed application below Exh.15 on 03.07.2010 for allowing the plaintiff to bring the respondents as a legal heirs of deceased defendant in Regular Civil Suit No. 622 of 2008. In those applications, the respondents defendants filed their affidavit-in-reply dated 13.04.2012 and vehemently opposed the applications below Exhs. 14 and 15. Initially, the respondents legal heirs of defendant failed to file their reply. Hence, the Trial Court allowed both the applications.

5 Being aggrieved by order passed by the Trial Court allowing applications filed by the plaintiff below Exhs. 14 and 15, the respondents preferred Writ Petition No. 10201 of 2011 before this Court. The same was allowed by this Court by order dated 29.03.2013 remanding the matter to the Trial Court for deciding on its own merits after giving opportunity to the respondents to file their reply. After hearing both the sides, the Trial Court passed order on 13.06.2012 holding that plaintiff failed to disclose the sufficient cause for condonation of delay and rejected both the applications. Hence, the present Writ Petition.

6 The learned Senior Counsel Mr. Gorwadkar appearing on behalf

of plaintiff submits that though the plaintiff shown sufficient cause for condonation of 14 months delay in filing application for bringing legal heirs on record of deceased sole defendant, the Trial Court failed to consider the same and rejected their applications. He submits that though the defendant expired on 19.04.2009, the Advocate for the defendant by his letter dated 05.09.2009 informed plaintiff's advocate the same. In that letter, defendants' Advocate stated that the deceased defendant left behind him surviving his two sons namely Ajit and Adwait. He submits that in that letter, the respondent has not disclosed their present correct address. The said letter reads thus:

5th September, 2009

*“To,
Shrikant B. Oka
Advocate for Plaintiff,
Nanadadeep, Dr. Moose Road,
Talaopali,
Thane 400 602*

Sir,

*Ref: IN THE COURT OF CIVIL JUDGE (J.D.)
THANE AT THANE
REG. CIVIL SUIT NO. 622 OF 2008
Dr. Vijay Vasudeo Bedekar .. Plaintiff
V/s.
Mr. Parshuram Pandureang Puranik
.. Defendant*

In the above matter, we would like to inform you that, the Defendant has died on 19.04.2009 and has left behind him surviving his two sons vis. Ajit and Adwait. Therefore, you are requested to take out necessary proceedings to bring them on record.

Should you need any clarification, please call us and we will be glad to be of assistance to you.

Yours faithfully,

*UNISAN & CO.
ADVOCATES*

*Encl.: 1. Copy of Death certificate of Parshuram Pandurang
Puranik
2. Copy of Birth Certificate of Ajit.
3. Copy of Birth Certificate of Adwait.”*

7 The learned Senior Counsel for the plaintiff submits that when the plaintiff contacted his Advocate for taking appropriate steps for bringing legal heirs on record, the plaintiff's Advocate informed him to find out the present correct addresses of respondents, so that they can file appropriate application for bringing them on record. He further submits that in that process some time lapsed. As soon as, the plaintiff obtained the present correct addresses of respondents, Advocate for the plaintiff filed application below Exh.14 for condonation of delay and application below Exh.15 for bringing legal heirs on record on 03.07.2010. He submits that these facts were not considered by the Trial Court and dismissed the application.

8 The learned Senior Counsel for the plaintiff in support of his contentions about the delay relies on judgment of the Apex Court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123*** particularly paragraphs 9, 10 & 11. He submits that the Apex Court in this authority held that the primary function of court is to adjudicate the dispute between the parties and to advance substantial justice. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics and seek

their remedy promptly.

9 The learned Senior Counsel for the plaintiff submits that though the subsequently the Trial Court passed order of abatement on 28.01.2016, the court can condone the delay. He submits that once the delay is condoned, abatement automatically goes. He submits that a prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied.

In support of this submission, the learned Senior Counsel for the plaintiff relies on judgment of the Apex Court in the matter of ***Mithailal Dalsangar Singh & Ors. V/s. Annabai Devram Kini & Ors. (2003) 10 SCC 691***, particularly paragraph 8, which reads thus:

“8. In as much as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally, A simple prayer 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 abatement. So also a prayer for setting aside abatement as regard one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be

brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for.”

10 On the basis of these submissions and law declared by the Apex Court, the learned Senior Counsel for the plaintiff submits that in the interest of justice, this Hon'ble Court be pleased to set aside the impugned order dated 13.06.2012 passed by the Trial Court and allow plaintiff's application below Exhs. 14 and 15. He submits that if impugned order is not set aside, irreparable loss and injury will be caused to the plaintiff.

11 On the other hand, the learned Counsel for the Respondent legal heirs of defendant vehemently opposed the present Writ Petition. He submits that the plaintiff has not shown sufficient cause for condonation of more than 14 months in filing the application for bringing legal heirs on record. He submits that the Trial Court rightly rejected the plaintiff's applications below Exh. 14 and 15. He submits that though the present Writ Petition filed by the plaintiff on 28.10.2013 and subsequently, the Trial Court passed order on 28.01.2016 dismissing the suit as abetted, Plaintiff has not challenged the order of abatement before the appropriate court. On this count, nothing survives in the present Writ Petition and same to be dismissed with costs.

12 The learned Counsel for the Respondents submits that the plaintiff has not made any prayer in his application below Exh.15 for setting aside abatement. He submits that as per Order 22 Rule 4(1) and Order 22 Rule 9 of Code of Civil Procedure, 1908, it is mandatory for the plaintiff to make appropriate prayer for setting aside the abatement. Hence, the Trial Court rightly rejected the plaintiff's applications below Exhs. 14 and 15. He further submits that even the application filed by the plaintiff below Exhs. 14 and 15 were not duly verified as required under Order 6 Rules 14 and 15 of Code of Civil Procedure, 1908. Same was filed by the plaintiff's advocate without proper verification. On that count also the applications filed by the plaintiff were not maintainable in law. In support of these contentions, the learned Counsel for the respondents relies on judgments in the matter of *State of Gujrat V/s. Sayed Mohd. Baquir El Edross*, CDJ 1981 SC 119, *Sadassiva Rauji Gaitonde & Ors. V/s. Jose Joaquim Fonseca*, AIR 1976 Goa, Daman & Diu 11 and *Bank of Baroda V/s. Vora Communication Centre & Ors.*, CDJ 1996 BHC 047.

13 The learned Counsel for the respondents submits that the reasons given by the plaintiff in his additional affidavit before the Trial Court that the Advocate for the defendant failed to inform them the addresses of the legal heirs, cannot be good cause for allowing the plaintiff's applications below Exhs. 14 and 15. He submits that alongwith said letter, the Advocate for the defendant forwarded the death certificate of defendant and copy of birth certificates of both the respondents. He submits that in the death certificate the full address of defendant has stated. He submits that apart from that the plaintiff and defendant

have their premises in the same building and inspite of that the plaintiff made statement in his application that for want of having postal addresses, there was delay on his part to prefer the application for condonation of delay cannot be considered. Hence, there is no substance in the present Writ Petition and same to be dismissed with costs.

14 I heard both the sides at length. It is to be noted that in the present proceeding, the learned Counsel for the defendant vide letter dated 05.09.2009 communicated the names of the legal heirs of deceased defendant. In the said letter, the advocate for the defendant had not informed the postal address of both the legal heirs. Hence, the plaintiff in his additional affidavit dated 27.04.2012 specifically stated that the plaintiff took some time to find out the addresses of heirs of the defendant. Paragraphs 2 and 3 of the said additional affidavit, read thus:

“2) I say that both the sons of the Defendant viz. Ajit and Adwait were never resided in the suit premises, since the date of filing of this suit and it was moral obligation of the Defendant's Advocate to communicate their addresses at the time of communicating their names to the Plaintiff.

3) I say that extra-ordinary time was spent and wasted in finding out the addresses of the heirs of the Defendants and finally when their heirs themselves appeared in this suit was the only time, when they were able to be served and/or made party to the suit.”

15 At the time of deciding the application below Exhs. 14 & 15, the Trial Court has not considered these facts. It is to be noted that the Apex Court in the matter of Mithailal (supra) as well as N. Balkrishnan (supra) specifically held that if sufficient cause is shown, court should

condone the delay. The Apex Court in the matter of N. Balkrishnan (supra) specifically held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. The authority cited by the learned Counsel for the respondents also stated that if the sufficient cause for condonation of delay is shown, court can condone the same.

16 Order 6 Rule 14 of Code of Civil Procedure, 1908 requires that ordinary pleading must be signed by the parties and his pleader, if any and also provides that in case of absence of the party, a person duly authorised may sign the pleading on behalf of the party concerned. It is necessary that such authorised person should be holder of the power of attorney. The object of verification is to ensure that untrue allegations were not made in the pleadings. In fact verification can be made by the person who is acquainted with the facts alleged. Order 6 Rule 15 of Code of Civil Procedure, 1908 provides that verification may be made by the party or one of the parties or by some one about whom the court is satisfied that he is acquainted with the facts of the case. In view of these facts, the objection raised by the respondents on the ground of Order 6 Rules 14 and 15 is not relevant. It is to be noted that the application filed by the plaintiff through his Advocate was according to law.

17 Considering the submissions made by learned Senior Counsel for the plaintiff and reasons disclosed by him in his additional affidavit in support of application for condonation of delay and law declared by the Apex Court in the matter of Mithailal (supra) and N. Balkrishnan

(supra), I am of the opinion that the order passed by the Trial Court dated 13.06.2012 is required to be set aside, allowing the plaintiff to bring the legal heirs on record of deceased defendant. But at the same time, plaintiff has to pay cost of Rs.75,000/- to the respondents. Cost to be paid to the respondents or their Advocate and/or deposit in the Trial Court within two weeks from today, failing which Writ Petition shall stand dismissed without referring back to the court. If cost is deposited in the Trial Court, the respondents are entitled to withdraw the same without furnishing any security.

18 Hence, following order is passed:

- a) Order dated 13.06.2012 passed by the Trial Court below Exhs. 14 & 15 in Regular Civil Suit No. 622 of 2008, is set aside.
- b) Applications filed by the plaintiff below Exh.14 & 15 are allowed.
- c) Abatement is set aside.
- d) Plaintiff is permitted to bring the legal heirs on record of deceased sole defendant in Regular Civil Suit No. 622 of 2008 within eight weeks from today.
- e) Plaintiff to pay cost of Rs.75,000/- to the respondents within two weeks from today.
- f) Plaintiff is permitted to pay cost either to the respondents or

their Advocate and/or to deposit in the Trial Court within stipulated time as stated herein above, failing which Writ Petition shall stand dismissed without referring back to the court .

g) If cost is deposited in the Trial Court within stipulated time as stated herein above, the Respondents are permitted to withdraw the same without furnishing any security.

h) Writ Petition stands disposed of accordingly.

(K.K.TATED, J.)