

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.507 OF 2017
IN
WRIT PETITION NO. 2488 OF 2003**

Mr. Mohamad Hussain Pinitod ..Applicant
Vs.
Smt. Kalavati Kaluram Phule (deceased) & Ors ..Respondents

Mr. S. N. Chandrachood for the Applicant
Mr. A. K. Jagtap for the legal heirs of the Respondent No.1

CORAM : R. M. SAVANT, J.
DATE : 24th APRIL, 2017

P.C.

1 The above Civil Application has been filed for restoration of the above Writ Petition which has stood dismissed on account of the non compliance of the conditional order dated 12-10-2011 passed by the Learned Registrar Judicial of this Court. By the said order, the amendment to bring the heirs on record of the Respondent No.1 was to be carried out within 4 weeks in default the Writ Petition was to stand dismissed for non prosecution.

2 It is required to be noted that prior thereto, the Learned Registrar Judicial of this Court had allowed the Civil Application No.2663 of 2010 filed by the Applicant for bringing the heirs of the Respondent No.1 on record. Since the application was in time, the Learned Registrar Judicial of this Court allowed the said Civil Application and thereafter the subsequent order dated

12-10-2011 came to be passed. Hence what remained was the amendment to be carried out in the cause title to bring the heirs of the Respondent No.1 on record. Since the default was committed by the Applicant in amending the cause title that the above Writ Petition stood dismissed for non prosecution on account of the conditional order dated 12-10-2011. As indicated above, the above Civil Application has been filed for restoration of the above Writ Petition.

3 The reason why the delay of almost 5 and half years in filing the above Civil Application has occurred is sought to be explained in the above Civil Application. It is averred in the Civil Application that through oversight the legal heirs of the Respondent No.1 were remained to be brought on record. It is further averred in the last paragraph on page 2 of the Civil Application that the Applicant became aware of the dismissal of the above Writ Petition when the bailiff had been to the suit premises but could not execute the warrant as the suit premises was locked by his wife who had gone out for her personal work. It is further averred that the said mistake of not bringing the heirs on record of the Respondent No.1 was not intentional or negligent, however it is on account of the mistake of the Learned Counsel appearing for the Applicant / Petitioner that the same has resulted in the dismissal of the above Writ Petition.

4 The above Civil Application was moved on 3-3-2017 when it seems it was portended to the Court that the Applicant /Petitioner was on the verge of loosing possession and that the bailiff could not execute the warrant as the suit premises were locked.

5 Whilst the Learned Counsel appearing for the Applicant / Petitioner Mr. Chandrachood would reiterate the case of the Applicant / Petitioner as urged in the above Civil Application. The Learned Counsel appearing for the Respondent Landlord Mr. Jagtap would submit that the interim order has been obtained in the above Civil Application by misrepresenting facts. It was his submission that the bailiff had visited the suit premises to serve the notice of the execution proceedings. The Learned Counsel further submitted that the reasons mentioned in the application do not inspire confidence. The Learned Counsel further sought to argue on merit as regards the bonafide need of the Respondent landlord.

6 Having heard the Learned Counsel for the parties, in my view the above Civil Application is required to be allowed an the Petition is required to be restored to file. As indicated above, the above Civil Application for bringing the heirs on record i.e. Civil Application No.2663 of 2010 was allowed by the Learned Registrar Judicial of this Court by order dated 12-10-2011. Thereafter time to carry out amendment was granted which was a period of 4

weeks and in default Petition was to stand dismissed for non prosecution. Hence it is not as if steps were not taken by the Applicant / Petitioner to bring the heirs of the Respondent No.1 on record, what remained was carrying out the amendment in the cause title. The averments in the Civil Application are revolving around the fact that the Applicant / Petitioner should not suffer for the acts of the Advocate.

7 In my view, as indicated above on technical ground of the cause title being not amended that the Writ Petition has stood dismissed for non prosecution. This would have to be seen in the context of the fact that the Writ Petition was already admitted in the year 2004 and was pending hearing and final disposal. In so far as the statement made in the Civil Application as also the statement made before a Learned Single Judge of this Court is concerned, in my view the said statements would have to be attributed to the information that the Petitioner may have furnished to the Learned Counsel Mr. Chandrachud. In any event statements would not come in the way of the Applicant / Petitioner in prosecuting the above Writ Petition on merits for which one final indulgence would have to be shown to the Applicant / Petitioner. The Civil Application is accordingly allowed, resultantly the Writ Petition is restored to file. Amendment to be carried out within 4 weeks from date. The heirs other than whose names are mentioned in the affidavit in reply at paragraph 7 in addition to the names already on record by way of the

above Civil Application may also be brought on record. In the facts and circumstances of the case, the Applicant / Petitioner to pay costs of Rs.3000/- to the Respondents to be handed over to Mr. Jagtap who would accept it on behalf of the Respondents and who would in turn forward it to the Respondents. Since the Petition is of the year 2003, the above Petition to be listed for final hearing after the Diwali Vacation of the year 2017. The Civil Application is accordingly disposed of.

[R.M.SAVANT, J]