

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12471/2016

Vashu Tulsidas Khatri

... Petitioner

V/s.

M/s. Rakesh Fabrics & Ors.

... Respondents

Mr. Popat R. Rathod for the petitioner

Mr. Rajesh Gehani with Sujal Vikhare for the Respondent No.2A.

**CORAM: K.K. TATED, J.**

**DATED : FEBRUARY 24, 2017**

**PC. :**

1. Heard the learned counsel for the parties. By consent of the parties, the matter is taken up for final hearing at the stage of admission itself.

2. By this petition under Article 226 and 227 of the Constitution of India the Petitioner challenges the order dated 06.07.2016 passed by the Member, Industrial Court, Maharashtra, Mumbai allowing the respondent's application below Exhibit C-7 dated 13.01.2016 for dismissal of complaint (ULP) No.97/2011 on the ground of abatement.

3. The learned counsel for the petitioner original complainant submits that the complainant filed complaint (ULP) No.97/2011 on 17.03.2011 before the Industrial Court, Mumbai under Item 9 and 10

of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (said Act). The respondent filed written statement on 16.07.2011. During pendency of that complaint, the sole proprietor of the respondent Mr.Darshanlal H. Madan expired on 21.08.2013. As the respondent failed to place on record all the documents, the petitioner made an application below Exhibit- U-8 dated 10<sup>th</sup> June 2015 for permission to produce 8 documents in support of their claim and contentions. Application below Exhibit-U-8 was decided by the Industrial Court on 10.06.2015 permitting the petitioner to place on record additional documents.

4. The learned counsel for the petitioner submits that the respondent's Advocate filed application dated 9<sup>th</sup> July 2014 stating that the respondent expired. Therefore, it is not possible for him to file further reply in complaint. He submits that the respondent, with application dated 9<sup>th</sup> July 2014 filed on record death certificate and copy of registration certificate issued under the Shops and Establishments Act but without the name and address of legal heir of the deceased. He submits that as the respondent failed to provide the names and addresses of the legal heirs of deceased sole proprietor, the petitioner made an application dated 13.01.2016 for directions to the respondent to provide the names and addresses of the legal heirs of the deceased sole proprietor of respondent to enable the petitioner complainant to implead them in complaint (ULP) No.97/2011. He submits that on the same day, the respondent also made an application for dismissal of the complaint as cause of action abates. He submits that the application made by the respondent for dismissal of the

complaint was numbered Exhibit-C-7. He submits that the Industrial Court allowed the said application Exhibit-C-7 by order dated 06.02.2016 without deciding the petitioner's application for direction to respondent No.1 to provide the names and addresses of legal heirs of deceased sole proprietor.

5. The learned counsel for the petitioner submits that the Industrial Court erred in coming to the conclusion that the petitioner failed and neglected to take appropriate steps for bringing the legal heirs on record of deceased sole respondent. He submits that the Advocate for the respondent, by his application dated 09.07.2014 furnished only death certificate of deceased respondent as well as the certificate issued under the Shops and Establishments Act. He submits that the petitioner waited for the response of the advocate for the respondent for names and addresses of legal heirs. As same was not provided, he made an application on 13.01.2016. He submits that these facts were not considered by the Industrial Court at the time of deciding the application made by the respondent for dismissal of complaint as abated.

6. The learned counsel for the petitioner submits that the Industrial Court held that there was delay on the part of the petitioner to make appropriate application for bringing the legal heirs on record of deceased sole respondent/proprietor. He submits that the Apex Court, in the matter of *Swami Prasad & Anr. Vs. Lakhan Singh (D) & Ors. Through Lrs.2010 3 JLJR (SC) 126* held that at the time of considering the application for condonation of delay for bringing the

legal heirs on record, the court should take a lenient view. He relies on para 3 of the said judgment which reads thus:

*“3. In Perumon Bhagvathy Devaswom Vs. Bhargavi Amma 2008(8) SCC 321, this court has held that where a respondent dies during the pendency of the appeal, at a time when the appeal has been pending for several years without being listed for hearing, the Court should take a lenient view in considering the application for condoning delay and setting aside the abatement. This is more so because the counsel for first respondent informed the court about the death of first respondent (which was on 28.05.1998) only on 01.08.2006 nearly eight years after the death. The material showed that the Appellants had no knowledge about the death.”*

7. The learned counsel for the petitioner further relies on the judgment in the matter of **Ram Sumiran and Ors. Vs. D.D.C. and Ors. 1985 AIR (SC) 606**. In this authority also, the apex court had set aside the abatement and permitted to bring the legal heirs on record. The relevant portion of the said judgment reads thus:

*“.....We accordingly allow the appeal, set aside the order of the High Court and direct that the abatement, if any, shall be set aside and the legal representatives of deceased respondent no.5 shall be brought on record and the Writ Petition shall be remanded to the High Court for disposal according to law. We may make it clear that in making this order we must not be presumed to have expressed any opinion on the merits of the controversy raised in the Writ Petition. It will be for the High Court to decide the Writ Petition according to law. We would request the High Court do dispose of the Writ Petition at a very early date and as far as possible, before the end of February, 1985. The ex parte order of stay made by us will stand vacated.”*

8. The petitioner relies on the judgment of the Apex Court in the matter of **Union of India & Anr. Vs. Nirmala Mitra (Dead) Through Lrs. 2010 (15) SCC 169**. In this case also the Apex Court had set aside

the abatement and directed the High Court to decide the matter on merits.

9. On the basis of this submission and the authorities, the learned counsel for the petitioner submits that this Hon'ble Court be pleased to set aside the order below Exhibit C-7 dated 06.02.2016 passed by the learned Member, Industrial Court, Mumbai in complaint (ULP) No.97/2011 directing the respondent to provide names and addresses of legal heirs of deceased respondent and direct the Industrial Court to decide the complaint on its own merits. He submits that the petitioner has good chance of success in the said complaint. He submits that, if order is not set aside, the irreparable loss and injury will be caused to the complainant petitioner.

10. On the other hand, the learned counsel for the respondent vehemently opposed the Writ Petition. He submits that though the respondent, by their application dated 09.07.2014 placed on record in complaint, a copy of death certificate as well as a photocopy of certificate issued under the Shops and Establishments Act, the petitioner failed and neglected to call upon the respondent's Advocate to provide the names and address of the legal heirs. He further submits that even at the time of hearing the application below Exhibit U-8, they disclosed these facts about the death of sole proprietor before the Industrial Court and those facts were recorded by the court in its order dated 10.06.2015. He submits that in spite of having knowledge about the death of sole proprietor of the respondent, the petitioner failed and neglected to make an appropriate application for bringing the legal heirs on record within time. He submits that for the first time, after

more than two years, the petitioner made an application on 13.01.2016 calling upon the respondent to provide the names and addresses of legal heirs of deceased sole proprietor. He submits that the petitioner failed to disclose the delay in making the said application. Hence, there is no substance in the Writ Petition. Same be dismissed with costs.

11. Heard both sides at length. It is to be noted that the Apex Court in the matter of *N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123* 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. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

*11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*

12. *A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749.*

13. *It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."*

12. In the present proceedings, the sole proprietor expired on 21.08.2013. The respondent failed to disclose the names and addresses of the legal heirs either to the court, petitioner or their Advocate. Even at the time of filing an application dated 13.01.2016 below exhibit C-7, they failed to disclose the names and addresses of the legal heirs. In any case, because of delay on the part of the petitioner in making an appropriate application, his complaint cannot be dismissed solely on this ground. Considering the judgment of the Apex Court, as stated hereinabove and cited by the advocate for applicant, I am of the opinion that the Industrial Court erred in coming to the conclusion that

the respondent has made out a case for allowing their application below exhibit-C-7. Same is required to be set aside with direction to the respondent's advocate to provide the names and address of the legal heirs to the petitioners.

13. At this stage, the learned counsel for the respondent submits that he is ready and willing to provide the names and addresses of the legal heirs of deceased sole proprietor to the Advocate for the petitioner during the course of the day. Statement is accepted.

14. Hence, following order is passed:

- a. Order dated 06.02.2016 passed by the learned Member, Industrial Court, Mumbai below exhibit C-7 in complaint (ULP) No.97/2011 is set aside.
- b. Complaint (ULP) No.97/2011 is restored to file before the Industrial Court, Mumbai for hearing on merits.
- c. Application dated 13.01.2016 made by the petitioner calling upon the respondent No.1 to disclose the names and addresses of the legal heirs of sole proprietor is allowed.
- d. The respondent is permitted to provide the names and addresses of the legal heirs of deceased sole proprietor-respondent to the petitioner's advocate immediately.
- e. Liberty granted to the petitioner to make an appropriate application, if they so desire, for bringing legal heirs on record of deceased sole proprietor within six weeks from today with copy to other side.
- f. If application is allowed by the Industrial Court for bringing legal heirs on record of sole proprietor-respondent, in that case, liberty to be granted to the legal heirs to file their written statement, if any.

- g. All contentions of the parties are kept open.
- h. The Writ Petition stands disposed of accordingly.
- i. No order as to costs.

**(K.K. TATED, J.)**