

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1287 OF 2017
IN
WRIT PETITION NO. 6351 OF 2000

Mr. Flex @ Felix Fernandes (Deceased) ...Applicants
Through Legal Heirs
Versus

Mr. Subhash Ramnath Rele and Ors ...Respondents

Mr. Rajesh S. Patil for the Applicants.
Mr. G.N. Salunke for the Respondents.

CORAM: G.S. KULKARNI, J.
DATED: 17th July, 2017

PC:-

1. Heard learned counsel for the applicants/petitioners and learned counsel for the respondents. At the outset, learned counsel for the respondents states that, respondent no.5 Smt. Ratnaprabha Shanti Kumar has expired in the year 2004. The grievance is that, no steps are taken so far by the petitioners to bring the legal heirs on record. Mr. Patil, learned counsel for the applicants would submit that, initially Miss Monica D'souza was the advocate for the petitioners and it is stated that, she is no more

in practice and accordingly he has now filed vakalatnama on behalf of the petitioners. He submits that, applicants would take immediate steps to bring the legal heirs of petitioner on record and this infirmity would not be permitted to last long. Appropriate steps in that regard be taken within a period of two weeks from today.

2. Accordingly, learned counsel for the respondents would inform Mr. Patil, the names of legal heirs of respondent no.5. As regards this application, the only consequence would be that, the prayers as made cannot be pressed against respondent no.5 as it stands abated against respondent no.5

3. Be that as it may, this application is for a cause which survives to the other applicants against other respondents. The cause is that by interim order dated 21/12/2000, this Court had granted interim relief to the petitioner in term of prayer clause (b) on usual terms to operate during the pending of the Writ Petition. Accordingly, the petitioners were depositing rent in the Court and the same has been deposited/paid till June 2016. However, the original petitioner Mr. Flex Fernandes died on 06/04/2016 at the advance age of 83 years as stated in Para 7 of the application. The wife of Mr. Flex has already pre-deceased him in the year 1984,

the legal proceedings were looked after by the original petitioner. The applicants being the legal heirs of deceased petitioner are also stated to be serving outside the country. The other difficulties in not complying with the interim order to deposit the rent are stated in Para 8 and 9 of the Civil Application. The perusal of the applicants as contended in Para 7 to 9 appears to be bonafide and there is no opposition of the respondents on the correctness of the said statements.

4. It is thus, in the interest of justice that, the delay in filing Civil Application be condoned, it is accordingly condoned. Other prayers also deserves to be granted in the interest of justice.

5. Accordingly, the Civil Application is granted in terms of prayer clause (b) and (c). The non-deposited rent is permitted to be deposited within a period of two weeks from today. Needless to observe that, the applicants/petitioners would also continue to deposit the rent as directed by this Court, till the final disposal of the application. Civil Application is accordingly disposed of in the above terms. No Costs. Parties to act on the authenticated copy of this order.

(G.S. Kulkarni, J.)