

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 3872 OF 2014
AND
CIVIL APPLICATION NO. 3873 OF 2014
IN
FIRST APPEAL NO. 1791 OF 2007

Purshottam S. Shetye
(since deceased through His Heirs) .. Appellant
vs.
Smt. Malti R. Parshetye .. Respondent
(deceased no legal heirs known)

Mr. K.S. Patil for the Appellant.
Mr. U.S.R. Singh for the Abhay S. Shetye.

CORAM : M. S. SONAK, J.
DATE : 30 JANUARY 2017.

P.C. :-

1] By order dated 4 September 2014, this court has dismissed First Appeal No. 1791 of 2007. The said order reads as follows:

“This matter was called out on 26/08/2014 and 01/08/2014 when none appeared for the appellant. None appeared for the appellant even today. Appeal is dismissed for default.”

2] Civil Application No. 3872 of 2014, which was taken out on 14 October 2014 seeks restoration of the first appeal. To this civil application, Smt. Malti has been impleaded as the respondent, by stating that she is deceased and “no legal heirs known”. Upon query as to how such a civil application is maintainable, Mr. Patil submits that the applicants had, on 9 July 2014, i.e., almost two months before the appeal itself came to be dismissed, taken out a civil application No. 3873 of 2014, stating that said Malti has expired and according to the applicants she has left behind no legal

representatives. In the said application, the reliefs applied for reads thus:

- “(a) That order of abetment if passed, may kindly be set aside.*
- (b) Administrative – General or any other Officers of this Hon'ble Court as this Hon'ble Court may deem fit and proper be appointed under the Provisions of Order 22 Rule 4A of the Code of Civil Procedure to represent Late Malti Respondent herein in the present Appeal.*
- (c) Any other further prayer that may be deem fit and proper be granted.”*

3] Mr. U.S.R. Singh, learned counsel appears for one Abhay S. Shetye, who has obtained a probate dated 31 March 2016, in respect of a Will left behind by the respondent Malti Parshetye. He submits that Malti expired on 7 April 2012. He submits that by communication dated 20 June 2012, not only the factum of demise of Malti, but also the claim of said Abhay was made known to the applicants, i.e., original appellants. He submits that in the probate proceedings instituted by Abhay, the applicants herein lodged a caveat. Upon Notice of Motion No. 20 of 2013 taken out by Abhay Shetye, it was held that the applicants have no caveatable interest and their caveat application was accordingly dismissed by order dated 22 April 2014. In these circumstances, Mr. Singh submits that it was the duty of the applicants to have brought on record said Abhay within prescribed period of limitation from the date of demise of Malti. Even otherwise, Mr. Singh submits that there is no explanation whatsoever for the unreasonable delay in even taking out Civil Application No. 3873 of 2014 invoking the provisions of Order 22 Rule 4A of the Code of Civil Procedure, 1908 (CPC). Mr. Singh submits that in fact in this civil application, the factum of

notice dated 20 June 2012 has been suppressed and it is portrayed as if for a long time the applicants were unaware of demise of Malti. Mr. Singh submits that in any case, the application for restoration of an appeal cannot lie by impleading a deceased person as party respondent. He submits that Civil Application No. 3872 of 2014, which seeks restoration has to be dismissed on this ground itself. If such civil application is dismissed, then there arises no question of even taking into consideration Civil Application No. 3873 of 2014.

4] Although, there is substance in the contention of Mr. Singh since, Civil Application Nos. 3872 and 3873 of 2014 have come up for hearing together, there is no difficulty in taking up Civil Application No. 3873 of 2014 for consideration, as if, the said civil application has been taken out in Civil Application No. 3872 of 2014. On account of technicalities, there is no necessity to make any orders which will only result in multiplicity of proceedings.

5] However, if Civil Application No. 3873 of 2014 is perused, it is clear that there is no explanation whatsoever for inordinate delay. In paragraph '6' of the said civil application, the applicants have stated that they were not made aware of death of Malti earlier and it is after giving knowledge of death of Malti that they made enquiries in Mumbai with relatives of the deceased as well as her native place and on such basis, they have come to know that she has left behind no legal representatives. Now this statement hides more than what it discloses. Clearly by notice dated 20 June 2012, the applicants were made aware of demise of Malti on 7 April 2012. There is no reference to this notice in the civil application. Further, the civil

application itself indicates that Abhay was claiming to be the legal representative. To oppose the claim of Abhay, even the applicants had taken out the caveat, which was dismissed by order dated 22 April 2014. In such a situation, there was really no justification in invoking the provisions of Order 22 Rule 4A of the CPC. At the highest the applicants could have stated that they are styling Abhay as legal representative without prejudice to their rights and contention that he is not. In any case, even assuming that a case was made out to invoke the provisions of Order 22 and Rule 4A of the CPC, nothing prevented the applicants taking out the civil application within the prescribed period of limitation from the date of demise of Malti, which were they were aware of on 20 June 2012 itself. There is absolutely no explanation for seeking setting aside of abatement of the appeal, which has automatically set in some time in September 2012. On this ground itself, Civil Application No. 3873 of 2014, even by regarding the said civil application as one being taken out, Civil Application No. 3872 of 2014 is liable to be dismissed. Accordingly, Civil Application Nos.3873 and 3872 of 2014 are liable to be dismissed and the same are hereby dismissed.

6] Since the civil applications are dismissed, any interim order or ad-interim orders granted earlier stand vacated.

7] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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