

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST.) NO.6517 OF 2017

M/s. Palshekar & Co. & Ors.

...Appellants

Vs.

Mangala Prakash Pradhan & Ors.

...Respondents

Mr. Avinash V. Joshi for the Appellants.

Mr. Vzair Z. Kazi I/by Mr. Yogendra M. Kanchan for Respondent No.4.

Mr. S.R. Ketkar for Respondent Nos.5, 7 & 8.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 18TH SEPTEMBER, 2018.

P.C. :

1. Heard learned counsel for the Appellants and the learned counsel for the Respondents.
2. This Appeal is preferred against the order dated 06.12.2016 passed by the City Civil Court, Greater Mumbai, thereby dismissing the Chamber Summons No.2233/2015, 2234/2015 and 2235/2015. All these Chamber Summons were taken out by the Appellants, who are the original Plaintiffs before the Trial Court in order to bring on record the legal heirs of Plaintiff Nos.5, 13 and 2.
3. Considering there was an inordinate delay of about 1258 days in the filing of first Chamber Summons, 1815 days in the second Chamber Summons

and 3861 days in the third Chamber Summons, the Trial Court was constrained to reject the same in the absence of sufficient cause being shown for such an inordinate delay and for negligence in bringing on record the legal heirs within time.

4. It is true that the reasons given by the Appellants for delay in bringing on record the names of legal heirs of deceased plaintiff may not be, strictly speaking, not sufficient considering that the suit was already abetted against them. Hence, the Trial Court may be justified in dismissing the said Chamber Summons. However in order to advance the substantive cause of justice and also for effective adjudication of the disputes between the same parties and in the interest of justice, the Appeal needs to be allowed.

5. Having regard however to the negligence and delay on the part of the Appellants, the Appeal is allowed subject to exemplary costs of Rs.30,000/- in each of the Chamber Summons, to be deposited by the Appellants in the Trial Court within a period of three weeks from the date of this order. The costs to be paid equally between Respondent Nos.1 to 4.

6. On failure of the Appellants to do so, this order shall stand automatically vacated, without further reference to this Court.

[DR. SHALINI PHANSALKAR-JOSHI, J.]