

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6979 OF 2017

Inorbit Malls (India) Pvt. Ltd. & Anr.	...	Petitioners
V/s.		
Sayyadali Raza Abdul Razzak Inamdar & Ors.	...	Respondents

- Mr.P.K. Dhakephalkar, Sr. Advocate a/w. Mr.Anirudh Hariani, Mr.Soura S. Ghosh & Ms. Parinaz Nagporwala i/b. Hariani & Co. for the Petitioners.
- Mr.Shrikrishna R. Ganbavale for Respondent No.1.
- Mr.Ajit J. Kenjale for Respondent No.7.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 10th APRIL, 2018.

P.C. :

1] Heard learned counsel for the parties.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 29th March 2017 passed by the Civil Judge Senior Division, Pune, below the applications at Exhibit-127 and Exhibit-129 .

3] The applications at Exhibit-127 and Exhibit-129 were filed by the original Defendant Nos.6 and 7 for review of the order dated 10th January 2017 passed below Exhibit-124 and the order dated 10th

January 2017 passed below Exhibit-125.

4] The application at Exhibit-124 was filed by the Respondent-Plaintiff for condoning the delay in bringing legal heirs of Defendant No.1 on record. The said application was filed on 28th November 2016; whereas the application at Exhibit-125 was filed by Defendant Nos.6 and 7 for disposing of the suit on the ground that it stands abated, as the legal heirs of Defendant No.1 were not brought on record, in prescribed time.

5] The trial Court has allowed the application at Exhibit-124 holding that, no say is filed to the said application and the delay in bringing the legal heirs on record being only of 58 days and the said delay being explained. Accordingly, the delay was condoned and abatement was set-aside, permitting the Plaintiff to carryout amendment to bring on record legal heirs of Defendant No.1. In view of this order passed below Exhibit-124, the trial Court has disposed of the application filed by the Defendant Nos.6 and 7 for abatement of the suit as rejected.

6] Being aggrieved thereby, the Review Application was preferred by the present Petitioners, who are Defendant Nos.6 and 7 before the trial Court. The first contention raised was that, without

there being any separate application for setting aside the abatement or for brining legal heirs of Defendant No.1 on record, the trial Court has allowed both the prayers and secondly, it is submitted that the delay was not of 58 days but of 7 years and therefore, the trial Court should not have condoned such delay; especially when there was application filed by the Defendant Nos.6 and 7 for abatement of the suit on the very ground that the legal heirs were not brought on record within time.

7] As regards the first contention that there was delay of more than 58 days, it is pertinent to note that the pursis was filed by Defendant No.5 before the trial Court on 30th August 2016 informing that Defendant No.1 has expired on 12th November 2007. Therefore, legally this fact was brought to the notice of the Plaintiff only on 30th August 2016, and since then, there was the delay of only 58 days. Therefore, it cannot be said that the trial Court has calculated the delay wrongly.

8] As regards the contention that the trial Court has allowed the application at Exhibit-124 holding that no say is filed by the either side, admittedly, no such say was filed on the said application but a separate application was filed for disposing of the suit on the ground that it stands abated. Now the trial Court was allowed this application

holding that the delay was only of 58 days from the date of filing of the pursis and it was properly explained. The consequence thereof is the dismissal of the application filed by the Defendant Nos.6 and 7 at Exhibit-125. Hence, no fault can be found in the impugned order passed by the trial Court on this aspect.

9] As regards the last contention that, there was no prayer or a separate application for setting aside abatement or to bring on legal heirs of Defendant No.1 on record, the trial Court has considered the fact that the suit is pending since the year 1998, already more than 15 years have lapsed and in view thereof, the trial Court has, without getting too technicality in the matter, by adopting pedantic approach, granted these consequential prayers also of setting aside the abatement and of bringing on record the legal of the Defendant No.1, to advance substantive cause justice. This Court therefore should not be too technical or adopt a pedantic approach, so as to scuttle the course of justice.

10] The impugned order therefore passed by the trial Court does not call for interference; hence this Writ Petition stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]