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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 66 OF 2018
WITH
CIVIL APPLICATION No. 93 OF 2018

Kuresh s/o Rustom Kushesh & Ors.	...	Appellants
Vs.		
Farokh Khodadad Irani		
@ (Yazdegardi) & Ors.	...	Respondents

Mr. S. K. Srivastav & Ms. Gayatri Sharma I/b S.K. Srivastav & Co., for the Appellants.

Mr. Kishore Jain a/w Priyal Chheda I/b Divya Jain & Priyal Chheda, for the Respondent No. 1.

CORAM : V. M. DESHPANDE, J.

DATE : JULY 13, 2018

PC :-

1. Heard the learned counsel for the Appellants and the learned counsel for the Respondent No. 1. The present appeal is filed against the order passed by the Judge, City Civil Court, Greater Bombay dated 18.9.2017 in Chamber Summons No. 2008 of 2016, taken out in BCCC Suit No. 6217 of 2006. By the said order, chamber summons is dismissed by the court below.

2. Two suits were filed before this Court, prior to their transfer to the City Civil Court. Prior to the transfer of the suit filed by the Appellants, was numbered as Suit No. 3507 of 2007, and after its transfer it was renumbered as BCCC Suit No. 6217 of 2006. Similarly, Respondent also filed a suit, being Suit No. 3656 of 2007 before this Court, and after its transfer to the City Civil Court, it was renumbered as S. C. Suit No. 6293 of 2007. Both the suits were filed for dissolution of partnership firm M/s. National Restaurant.

3. As per the Appellants, in their suit they sought declaration that partnership firm stood dissolved w.e.f. 24.9.2007, whereas in other suit filed by the Respondents, they sought declaration that it stood dissolved on 24.7.2007. Thus, it is crystal clear that the dispute was not about dissolution of the firm, but the disputed was from which date the partnership stood dissolved.

4. In the suit filed by the Appellants / plaintiffs, defendant No. 4 was Simindokth, w/o Khodadad Merwan Irani

@ Yazdegardi, and she expired on 6.8.2009 and defendant No. 3 Bejan Khodadad Ahrestani @ Irani expired on 31.10.2010.

5. Present Respondents took out Chamber Summons Nos. 347 of 2010 and 343 of 2011 for bringing legal representatives of Respondent Nos. 3 and 4 on record.

6. These chambers summons were opposed by the present Appellants and vide order dated 18.1.2012 an inquiry was ordered as to whether they are the legal representatives or not. After the due inquiry from the court below, after the due opportunity was given to the parties, on 10.10.2013 Chamber Summons No. 347 of 2010 was allowed whereas Chamber Summons No. 343 of 2011 was also allowed on 12.2.2013.

7. Though these two chambers summons were contested by the present Appellants and though the orders were passed allowing those two chambers summons, thereby allowing the legal representatives of the deceased to be brought on record, the said orders were never challenged by the present Appellants. Consequently, the orders allowing the chambers

summons attained its finality and legal representatives of the deceased are brought on record for prosecuting that suit.

8. The deceased were also defendants in the suit filed by the Appellants / plaintiffs. Though it is well within their knowledge about their death, and in spite of the fact that Appellants were knowing the legal representatives, they were not brought on record in the suit filed by the Appellants. According to the Appellants, since both suits were listed together and they used to be adjourned together from time to time, they were under impression that the legal representatives of the deceased were also brought on record in their suit.

9. The limitation for bringing legal representatives on record starts from the death of the deceased. Since it was never the case of the Appellants that they were unaware of the death of the deceased or their legal representatives, it was obligatory on their part to bring the legal representatives on record within time. The explanation sought to be given by the Appellants for not bringing the legal representatives on record appears to be

flimsy and cannot hold a water. Further, the Appellants are not rustic persons, by which they claim ignorance of law, though it is not permissible for anybody. The learned Judge of the court below has dismissed the chambers summons, in my view, rightly, since no plausible explanation was offered by the Appellants. Further, in my view, the court below has correctly recorded a finding that no prejudice will be suffered by the Appellants since the prayer clauses are identical. In that view of the matter, I see no reason to take any exception to the order passed, which is impugned in this appeal. Consequently, appeal is dismissed. Needless to state that civil application pending in this appeal shall also stand dismissed.

10. At this stage, both the learned counsel agreed that the hotel is in lock and key of the receiver. The learned counsel for the Appellants submits that the court receiver be continued to remain in possession of the same for further six weeks. Looking to the fact that hotel is in possession of the Court Receiver, Court Receiver is entitled to remain in possession of

the subject hotel for further six weeks.

11. It is made clear that both parties are at liberty to file an application for appointment of the Court Receiver, till suit is decided by the court below.

Sd/-
[V. M. DESHPANDE, J.]

Vinayak Halemath