

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.31264 OF 2017

Ramchandra Mahadu Dhokare (Since Deceased),
Through Dattatray R. Dhokare & Ors. Petitioners
V/s.
Ramesh Govindrao Bhosale & Ors. Respondents

Mr. P.D. Dalvi, i/by Mr. Girish R. Agrawal, for the Petitioners.

Mr. A.R. Metkari, A.G.P., for Respondent Nos.8, 9 and 10.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 2ND FEBRUARY 2018.

P.C. :

1. Heard Mr. Dalvi, learned counsel for the Petitioners and Mr. Metkari, learned A.G.P. for the Respondent-State.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 6th September 2017 passed by the 8th Joint Civil Judge, Senior Division, Nashik, below "Exhibit-158" in Regular Civil Suit No.1515 of 2015.

3. Petitioners are Original Defendant Nos.4 to 14. The application at "Exhibit-158" was filed by the Respondents-Plaintiffs for setting aside

the abatement and to bring on record the legal heirs of Original Defendant No.11, who has expired on 5th December 2009. The Trial Court has allowed the said application; however, considering the delay of about 6 years in bringing the legal heirs deceased Defendant No.11 on record, the cost of Rs.2,000/- was imposed.

4. The submission of learned counsel for the Petitioners is that, the Petitioners had informed to the Respondents and also to the Court by filing pursis on 25th April 2011 itself, that Defendant No.11 has died. Despite that, immediate application was not filed to bring on record the legal heirs of deceased Defendant No.11. There is delay of more than about 6 years, even from the date of information given vide pursis dated 25th April 2011 and the said delay being not explained satisfactorily, the Trial Court has committed an error in allowing the application at “Exhibit-158”, thereby setting aside the abatement and permitting to bring on record the legal heirs of deceased Defendant No.11.

5. However, perusal of the application filed by the Respondents-Plaintiffs before the Trial Court clearly goes to show that, they have given the reason for the delay in filing such application and the reason was that the 'General Power of Attorney', who was looking after the Suit, namely, Shri Vishram Aabaji Shete, has become old and was residing in the rural area; therefore, he could not get necessary information about

the legal heirs of deceased Defendant No.11 and hence, there was delay in collecting the names of the legal heirs, their addresses and other details, in order to bring their names on record.

6. This reason appears to be justifiable, considering that the pursis is filed only to inform that Defendant No.11 has died. The date of his death and who are his legal heirs, is not informed. Therefore, the Respondents-Plaintiffs were required to collect all this information subsequently and having regard to the fact that the 'General Power of Attorney' of the Respondents-Plaintiffs was old and residing in the rural area, it cannot be said that no explanation is offered for this delay.

7. The Trial Court has considered the fact that, in order to decide the dispute between the parties finally, effectually and completely, the interest of justice requires that, instead of dismissing the Suit on the technical ground of abatement, it would be essential to decide the same on merits and, therefore, allowed the said application at "Exhibit-158" for setting aside the abatement, condoning the delay and to bring on record the legal heirs of deceased Defendant No.11.

8. In order to compensate the Petitioners, the Trial Court has also imposed the cost of Rs.2,000/- and further directed that the hearing of the Suit be expedited.

9. In view thereof, the impugned order passed by the Trial Court does not suffer from any illegality, so as to warrant interference therein in the writ jurisdiction. The Writ Petition, therefore, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]