

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.4777 OF 2014

(Orbit Super Market Pvt. Ltd., Nagpur and another Vs. Smt. Mukta Arvind Bobde and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri R.V. Shah, Advocate for Petitioners.
Shri M. Shareef, Advocate for Respondent No.1.

CORAM: R.K. DESHPANDE, J.

DATE: 16th MARCH, 2018.

Civil Application (CAW) No.2879/2017 Along with Civil Application (CAW) No.2739/2017:

Civil Application (CAW) No.2879/2017 for bringing the legal representatives of the respondent No.2, who expired on 11.06.2016 was filed on 13.12.2017. The respondent No.1 has filed Civil Application (CAW) No.2739/2017 for dismissal of the petition as abated, for failure to bring the legal representatives of respondent No.2 on record. The parties have also filed replies to both these applications. The names of the legal heirs of the respondent No.2 have also been given.

The application for bringing legal representatives is strongly opposed by the respondent No.1, on the ground that ordinarily it is required to be filed within a period of 90 days from the date of death of the party or from the date of

knowledge about the death. However, the proceedings before this court are writ proceedings and therefore, the provision of Order 22 Rule 3 read with Article 120 of the Limitation Act would not be applicable and this is what is conceded by Shri Shareef, the learned counsel appearing for the respondent No.1 by relying upon the decision of the Apex Court in the case of *Puran Singh and others v. State of Punjab and others* reported in (1996) 2 SCC 205.

Paragraph 12 of the aforesaid decision being relevant, is reproduced below:

12. As such even if it is held that Order 22 of the Code is not applicable to writ proceedings or writ appeals, it does not mean that the petitioner or the appellant in such writ petition or writ appeal can ignore the death of the respondent if the right to pursue remedy even after death of the respondent survives. After the death of the respondent it is incumbent on the part of the petitioner or the appellant to substitute the heirs of such respondent within a reasonable time. For purpose of holding as to what shall be a reasonable time, the High Court may take note of the period prescribed under Article 120 of the Limitation Act for substituting the heirs of the deceased defendant or the respondent. However, there is no question of automatic abatement of the writ proceedings. Even if an application is filed beyond 90 days of the death of such respondent, the Court can take into consideration the facts and circumstances of a particular case for purpose of condoning the delay in filing the application for substitution of the legal representative. This power has to be exercised on well known and settled principles in respect of

exercise of discretionary power by the High Court. If the High Court is satisfied that delay, if any, in substituting the heirs of the deceased respondent was not intentional, and sufficient cause has been shown for not taking the steps earlier, the High Court can substitute the legal representative and proceed with the hearing of the writ petition or the writ appeal, as the case may be. At the same time the High Court has to be conscious that after lapse of time a valuable right accrues to the legal representative of the deceased respondent and he should not be compelled to contest a claim which due to the inaction of the petitioner or the appellant has become final.

In view of the aforesaid law laid down by the Apex Court there will be no automatic abatement of the writ proceedings and even if an application is filed beyond the period of 90 days of the death of the respondent, the court can take into consideration the facts and circumstances of a particular case for the purpose of condoning the delay in filing the application for substitution of the legal representative. The power is required to be exercised by the court on the well known and settled principles in respect of exercise of discretionary power by the High Court. If the High Court is satisfied that the delay, if any, in substituting the heirs of the deceased respondent was not intentional, and sufficient cause has been shown for not taking the steps earlier, the High Court can substitute the legal representative and proceed with the hearing of writ petition or the writ appeal, as the case may be. The High Court has to be conscious that after lapse of time a valuable right accrues to the legal representative of the

deceased respondent and he should not be compelled to contest a claim which due to the inaction of the petitioner or the appellant has become final.

The learned counsel for the parties do not dispute that even if the legal heirs of the respondent No.2 are not brought on record, the right to sue survives. Neither the provision of Order 22 Rule 3 nor the provision of Article 120 can be invoked to dismiss the application for bringing the legal representative of respondent No.2 on the ground that it is barred by the law of limitation. It is a question of exercise of discretion based upon well settled principles of law.

In the decision of the Apex Court in *Balwant Singh (Dead) v. Jagdish Singh and others* reported in (2010) 8 SCC 685. It is held in paragraph 35 as under:

35. *The expression “sufficient cause” implies the presence of legal and adequate reasons. The word “sufficient” means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such law does not stand frustrated.*

Shri Shareef further invites my attention of this court to paragraph 39 which is reproduced below:

39. On an analysis of the above principles, we now revert to the merits of the application in hand. As already noticed, except for a vague averment that the legal representatives were not aware of the pendency of the appeal before this Court, there is no other justifiable reason stated in the one page application. We have already held that the application does not contain correct and true facts. Thus, want of bona fides is imputable to the applicant. There is no reason or sufficient cause shown as to what steps were taken during this period and why immediate steps were not taken by the applicant, even after they admittedly came to know of the pendency of the appeal before this Court.

In the present case, the claim for bringing the legal representatives of the respondent No.2 on record is required to be assessed on the basis of the principles laid down by the Apex Court in the aforesaid decisions. The averments made in paragraph 3 of the application need to be seen and the same is therefore, reproduced below:

3. That inadvertently, the necessary steps for substituting the above named legal representatives of the deceased respondent No.2 herein remained to be taken by the petitioners herein in the petition. The petitioners herein most humbly submit that the delay in filing the application for bringing the legal representatives of the deceased Respondent No.2 herein on record is absolutely bonafide and unintentional.

Shri Shareef, the learned counsel appearing for the respondent No.1 also invited my attention to various correspondence between the petitioner and the legal heirs of the respondent No.2 after 11.06.2016 to show that the petitioners were well aware of the date of death of the respondent No.2 on 11.06.2016.

The dispute is between the landlord and the tenant in respect of eviction from the premises. The right to sue survives. The expression “sufficient cause” has to be construed liberally and after going through the facts and circumstances of the case, I am of the view that the delay caused of 514 days cannot be said to be intentional. It is the inadvertent mistake accepted by the petitioners. From the fact that the petitioner has been litigating the matter and has been continuously paying the rent in compliance with the interim order passed by this Court even after the death of the respondent No.2, it can be gathered that the application is *bonafide*, the delay is unintentional and sufficient cause is made out. The discretion is required to be exercised in favour of the petitioner, as it is done normally.

In view of above, the Civil Application (CAW) No.2879/2017 is allowed and the Civil Application (CAW) No.2739/2017 is dismissed. The legal representatives of the respondent No.2 be brought on record within a period of two weeks from today.

Shri Shareef, the learned counsel waives notice for the legal representatives of the respondent No.2.

Put up this matter for final hearing after Summer Vacation, 2018.

JUDGE

NSN