

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1638 OF 2019

Prakash Apgonda Patil ...Petitioner
vs.
Prasad Subhash Patil and Ors. ...Respondents

Mr. Saurabh Oka, for the Petitioner
Mr. P.P. Kulkarni, for the Respondents

CORAM : M. S. SONAK, J.

DATE : APRIL 10, 2019

JUDGMENT:

. Heard Mr. Oka, learned counsel for the Petitioner and Mr. Kulkarni, learned counsel for the Respondents.

2. Rule. Rule is made returnable forthwith with consent of and at the request of learned counsel for the parties.

3. The challenge in this Petition is to the order dated 13th December, 2018. The operative portion of which read thus:

1] *The application for addition of parties filed by legal heirs of deceased Subhash Patil is allowed.*

2] *No order as to costs.*

3] *The amendment be carried out by the applicant Prakash Patil to the above said respect by bringing legal heirs of deceased Subhash Patil on record within 10 days from today.*

4. The record indicates that on 13th December, 2018 on which the impugned order was made, the Petitioner was present in the Court in person and had applied for adjournment to file response to the application. Instead, the adjournment application was rejected and the learned trial Judge disposed of the application seeking impleadment. In paragraph 8 of the Petition, the Petitioner has not stated accurate particulars. He has stated that on 13th December, 2018 the matter was adjourned to 21st December, 2018. However, on 21st December, 2018 when the Petitioner along with his advocate came to the Court to file reply. The Petitioner and his advocate learnt that the application (Exhibit 5) was disposed of on 13th December, 2018 itself.

5. Though the aforesaid statement is not accurate, it is possible that the application for adjournment was rejected by the learned trial Judge on 13th December, 2018 itself. In any case, the Petitioner should have been careful before making such statement in the Petition, at least the Roznama for 13th December, 2018 was required to be perused before such statement was made.

6. Despite the aforesaid, it does appear that the Petitioner who

appeared on 13th December, 2018 was confused about exactly what happened before the learned trial Judge. The record indicates that the Petitioner had not filed his reply to the application (Exhibit 5) in order to the Petitioner or his advocate her on the said application. The Petitioner, accordingly deserves to be granted one more opportunity in the matter, no doubt, subject to the payment of costs.

7. Accordingly, the impugned order dated 13th December, 2018 is set aside not on merits but only in order to offer the Petitioner an additional opportunity to file reply and make submissions thereof.

8. The merits in the application are kept open to be determined by the learned trial Judge afresh after taking into consideration the reply of the Petitioner and arguments to be made on behalf of the Petitioner. In fact all contentions of all parties are left open. The impugned order is set aside.

9. The learned trial Judge to decide the application (Exhibit 5) afresh after taking on record the Petitioner's reply to the same. The application to be disposed of as expeditiously as possible and in any case on or before 30th June, 2019.

10. All contentions of all parties are left open.

11. The aforesaid relief is subject to the Petitioner's paying to the Respondents costs of Rs. 5,000/- on or before 30th April, 2019. The costs either to be directly paid to the Respondents or deposited before the trial Court. If the costs are deposited/paid, the Respondents are at liberty to withdraw the same unconditionally.

12. Rule is made absolute on the aforesaid terms.

13. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)