

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.42 OF 2019
IN
CIVIL REVISION APPLICATION NO.28 OF 2015

Shahnawaz Khan Sarfaraz Khan ... Applicant
Vs.
Iqbal Patel (decd) through LRs Tajunnisa
Iqbal Patel and others ... Respondents

Mr. Nitin Gangal a/w. Ms Namita Mestry and Prabhavatsen Balan for Applicant.
Mr. Y. E. Mooman for Respondents.

CORAM : R. G. KETKAR, J.
DATE : JUNE 12, 2019

P.C. :

Heard Mr. Gangal, learned Counsel for the applicant and Mr.Mooman, learned Counsel for the respondents.

2. This is an application for bringing the heirs and legal representatives of the respondent by carrying out the consequential amendments, after condoning the delay of 47 days in filing the application.

3. In support of this application, Mr. Gangal submitted that respondent died on 23.03.2018. The matter was listed before the trial Court on 02.07.2018 when son of the plaintiff informed that plaintiff has expired. The learned trial Judge adjourned the matter to 06.08.2018 so as to take steps for bringing legal representatives of the plaintiff on record. He submitted that in paragraph 3 of the application, it is stated that it was only on 24.09.2018, applicant's Advocate in the trial Court

was apprised about the death of the respondent. However, copy of the death certificate as also the details of the heirs and legal representatives of the respondent such as names, ages and address were not furnished to him. He, therefore, submitted that delay in filing the application may be condoned and relief claimed in the application may be granted.

4. As against this, Mr. Mooman strenuously opposed this application. He invited my attention to the reply filed by respondent No.1e where in paragraph 6 it is asserted that he had informed about the death of the respondent to the trial Court on 02.07.2018. Thus, the applicant has falsely contended that he acquired knowledge only on 24.09.2018. The applicant had acquired knowledge about the death of the respondent on 02.07.2018 and therefore, it cannot be said that there is delay of 47 days in filing the application. He further submitted that C.R.A. was dismissed in default and till such time, C.R.A. is restored, this Application cannot be considered.

5. In so far as the contention that the applicant acquired knowledge on 02.07.2018, he submitted that applicant and the respondent are residing in the same building. Applicant attended the funeral of the respondent. Applicant is aware of the legal representatives of the respondent.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Order XXII, Rule 10-A of the Code of Civil Procedure, 1908 lays down that whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the

deceased party shall be deemed to subsist. In the present case, a perusal of the Rojnama dated 02.07.2018 shows that plaintiff's son was present before the trial Court and reported that plaintiff had expired. The matter was adjourned so as to take steps for bringing legal representatives of the plaintiff. In my opinion, it was for the plaintiffs in the trial Court to take steps for bringing legal representatives of the deceased plaintiff on record. So far as the present case is concerned, it cannot be said that applicant got knowledge on 02.07.2018 as regards legal representatives of the respondent. Once the duty is cast under Order XXII, Rule 10-A on the plaintiff to communicate to the trial Court and for taking effective steps, it is also necessary to supply copy of the death certificate and the details of the legal representatives of the deceased. In the reply, it is not stated that such steps were indeed taken by the respondents.

7. Civil Revision Application along with Civil Application for restoration as also Civil Application for bringing legal representatives were heard on 12.02.2019. In paragraph 5 of that order, it was made clear that on the next date, the Court will proceed to decide the C.R.A. on merits and the parties will proceed to argue the C.R.A. on the premise that C.A.No.5 of 2018 for restoration and C.A.No.42 of 2019 for bringing legal representatives of the respondent are allowed.

8. In the light of the aforesaid discussion and for the reasons stated in the Application, Civil Application is allowed in terms of prayer clauses (a), (b) and (c) with no order as to costs.

(R. G. KETKAR, J.)