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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7846 OF 2016

Popat Genba Kolpe

..Petitioner.

V/s.

Kaluram Baban Kolpe (since deceased)
through LRs.

.Respondents.

Mr.Sushant S.Prabhune for the petitioner.

MrSuresl S.Shah with Swaroop Karade. for the respondents.

CORAM : M.S.SONAK, J.

DATE : APRIL 15, 2019

ORAL JUDGMENT

Heard Mr.Prabhune, learned counsel for the petitioner
and Mr.Shah, learned counsel for the respondents.

2. Rule. Rule made returnable forthwith with the consent
and at the request of the parties.

3. Challenge in the petition is to the order dated April 12,
2016 by which learned trial Judge has condoned the delay in
bringing the legal representatives of defendant No.7 on record and
further permitted the legal representatives to come on record subject

to costs of Rs.3,000/-.

4. Mr.Prabhune, learned counsel for the petitioner points out that the delay in this case was about 9 years and there was no sufficient cause to explain such delay. Relying upon the decision in the case of *Balwant Singh (Dead) V/s. Jagdish Singh and others*¹, Mr.Prabhune submits that in the absence of any sufficient cause being shown, learned trial Judge was not justified in condoning such an inordinate delay and setting aside the abatement. He submits that in the name of liberal construction, unexplained and inordinate delay could never be condoned. In the alternate, Mr.Prabhune submits that the costs awarded also warrants an upward revision.

5. Mr.Shah, learned counsel for the respondents submits that it is the duty of the petitioner to have given intimation about the death of defendant No.7. He submits that this duty was not performed by the petitioner. He submits that sufficient cause was shown and in such matters, it is acceptability of cause and not the length of delay that is relevant. He relies upon the decision of the Constitution Bench of the Supreme Court in *Sardar Amarjit Singh Kalra (Dead) by LRs. and others V/s. Pramod Gupta (Smt) (dead) by LRs. And others*². He submits that in the matter of

1 (2010) 8 SCC 685

2 (2003) 3 SCC 272

condoning the delay and setting aside the abatement, the Court has to adopt a liberal approach. For these reasons, he submits that this petition be dismissed.

6. The rival contentions now fall for my determination.

7. In the present case, the delay was no doubt substantial, however, the explanation furnished was that there were several deaths and in the bargain, steps remained to be taken in respect of demise of defendant No.7. It is further submitted that no information was furnished regarding the legal representatives of deceased defendant No.7. Learned trial Judge has exercised discretion in a positive manner and thereafter condoned the delay and set aside the abatement.

8. In the matter of this nature, when discretion is exercised in a positive manner and delay is condoned, normally this Court does not interfere unless the approach of the learned trial Judge is totally unreasonable or manifestly unjust. Such cases normally form on their own facts. In *Balwant Singh (supra)*, the Hon'ble Supreme Court has held that in the name of liberal construction, the delay cannot be condoned where no cause whatsoever is shown. In *Sardar Amarjit Singh Kalra (supra)*, the Constitution Bench has held Laws of

procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal law, property and other laws.

9. In *Sardar Amarjit Singh Kalra (supra)*, the Apex Court has held that a careful reading of the provisions contained in Order 22 of CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to the property or any claim remains intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. There are similar observations in paragraph 31 to the effect that with the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to

defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law, inevitably necessitates it. Consequently, having regard to the nature of the proceedings under the Act and the purpose of reference proceedings and the appeal therefrom, the Courts should adopt a liberal approach in the matter of condonation of the delay as well as the considerations which should weigh in adjudging nature of the decree, i.e., whether it is joint and inseverable or joint and severable or separable.

10. Mr.Prabhune, learned counsel for the petitioner submits that the decision in *Sardar Amarjit Singh Kalra (supra)* was not dealing with the issue of sufficient cause. This is not correct. The decision not only deals with the aspect of sufficient cause, but also with the aspect of sufficient cause in bringing legal representatives on record.

11. Considering the aforesaid position, there is no case made out to interfere with the impugned order condoning the delay and setting aside the abatement. However, Mr.Prabhune is quite right in his alternate submission that the costs awarded by the learned trial Judge in the facts and circumstances of the present are totally inadequate.

12. According to me, the costs will have to be enhanced from Rs.3,000/- to Rs.15,000/-, taking into consideration the extent of delay and the consequent prejudice to the petitioner.

13. Accordingly, the impugned order is modified only on the aspect of costs. The costs are enhanced from from Rs.3,000/- to Rs.15,000/-. The respondents will have to pay the costs of Rs.12,000/- i.e. the balance costs within a period of six weeks from today. The costs may either be directly paid to the petitioner or deposited before the trial Court.

14. If the costs are deposited in the Court, liberty is granted to the petitioner to withdraw the same unconditionally.

15. Rule is made partly absolute to the aforesaid extent.

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

(M.S.SONAK, J.)