

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.2274/2019
in
First Appeal No.2218/2007

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. Pankaj Kowli i/b. Meghna Acharekar
for the Applicant

CORAM : K.K.TATED, J.
DATED : JULY 4, 2019

P.C.

1 Heard. The learned counsel for the Applicant - Plaintiff submits that the Respondents are duly served. He undertakes to file an Affidavit of service within a week. The undertaking is accepted.

2 By this Civil Application the Applicant is seeking permission to bring them on record in place of original Appellant who died.

3 The learned counsel for the Applicant submits that initially Jayawant Chandrappa Yelerikar had filed L.C.Suit No.6058/2001 in the Bombay City Civil Court for declaration that the notice issued by the Corporation on 21.09.2001

and the order of the Assistant Commissioner dated 07.11.2001 are illegal and for perpetual injunction restraining the Corporation from demolishing the structure mentioned in that notice. That suit was dismissed by the Trial Court. Hence, the original Plaintiff has filed the present Appeal No.2218/2007 which was admitted by this court. During pendency of this First Appeal, the Plaintiff expired. Hence, his son David Jayawant Yelerikar made Civil Application No.3311/2010 for bringing him on record as legal heir of the deceased sole Appellant. He submits that, that Application was allowed by this court by order dated 22.09.2010.

4 The learned counsel for the Applicant submits that David Jayawant Yelerikar died on 31.10.2016. He submits that thereafter the present Applicant made enquiry and learnt that though the order was passed by this court on 23.09.2010 in Civil Application No.3311/2010 allowing the Applicant David Jayawant Yelerikar to carry out amendment in the First Appeal showing his name as Appellant, it remained on the part of the concerned advocate to carry out

amendment. Hence, the Applicant, legal heir of David Jayawant Yelerikar made the present Civil Application. He submits that, hence, there is delay in preferring the Civil Application.

5 The learned counsel for the Applicant submits that in the interest of justice this Hon'ble Court be pleased to condone the delay in bringing the legal heirs on record of deceased Appellant – Plaintiff and the matter be decided on its own merits. He submits that the Applicant has good chance of success in the matter.

6 Considering the submissions made by the learned counsel for the Applicant, the averments made in the Application and earlier order dated 23.09.2010, I am satisfied that the Applicant has made out a case for allowing the present Civil Application.

7 Hence, the following order:

a) Delay in filing the First Appeal is condoned.

b) Abatement is set aside.

c) The Civil Application is allowed in terms of prayer clause (c) which reads

thus:

“(c) That the names of the Applicants be allowed to be added as party Appellants in place of the deceased Original Appellant in the above First Appeal and other proceedings, as per Schedule-I”

d) The Applicant to carry out appropriate amendment in the First Appeal on or before 03.08.2019, failing which the Civil Application shall stand dismissed without further reference to the court.

e) If amendment is carried out within stipulated time as stated hereinabove, the Applicant is directed to serve an amended copy of the First Appeal, on the Advocate for the Respondents as well as the Municipal Corporation on or before 03.08.2019 and file an Affidavit of service to that effect, failing which the Civil Application shall stand dismissed without further reference to the court.

f) Civil application stands disposed off accordingly.

g) No order as to costs.

(K.K.TATED, J.)