

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2169 OF 2019
IN
WRIT PETITION NO. 13688 OF 2018

Rekhaben K. Shah ... Applicant.

In the matter between :-

Rekhaben K. Shah ... Petitioner.

Versus

Mrs. Padma Gautamlal Shah ... Respondent.

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Smt. Vidita S. Bhalekar i/b Sameer Bhalekar for the Applicant.

Mr. Percy Ghandy a/w Mr. S.A.K. Najam-es-sani i/b Maneksha & Sethna
for the proposed respondents.

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CORAM : A. S. GADKARI, J.

DATE : 18th DECEMBER, 2019

P. C. :

1. This is an application for condonation of delay of 145 days in filing the present application for bringing legal heirs of sole respondent on record and for setting aside the abatement of the Writ Petition.

2. Heard Smt. Bhalekar learned counsel for the Applicant and Mr. Ghandy, learned counsel for the proposed respondents.

3. Mr. Ghandy, learned counsel appearing for the proposed respondents vehemently opposed the application. He submitted that Smt. Padma Shah has expired on 23th December 2018. That by a communication dated 18th January 2019 the Advocate for the respondent (i.e. Smt. Padma

Shah) intimated the said fact of her demise to the Advocate for the petitioner. A copy of her death certificate was also annexed along with the said Communication. He submitted that, despite the said fact, present application for bringing the executors of late Smt. Padma Shah has been filed on 19th August 2019 i.e. after a lapse of about 145 days. He further submitted that, the present application is filed with indolence and without due diligence in the matter.

He submitted that, the said delay is inordinate and has not been properly explained by the applicant. He submitted that, in such a situation the delay should not ordinarily be condoned and application may be dismissed. In support of his contention, he relied on two decisions of the Hon'ble Supreme Court namely (i) *Puran Singh and Ors Vs. State of Punjab and Ors.* reported in *AIR 1996 Supreme Court 1092* and (ii) *Perumon Bhagvathy Devaswom, Perinadu Village Vs. Bhargavi Amma and Ors.* reported in *(2008) 8 SCC 321*. He therefore prayed that the present application may be dismissed.

4. It is the settled position of law that, when the High Court exercises extraordinary jurisdiction and also supervisory jurisdiction under Articles 226 and 227 of the Constitution, it aims at securing speedy and efficacious remedy to a person, whose legal or constitutional right has been infringed. If all the elaborate and technical Rules, laid down in the CPC are to be applied to the writ proceedings, the very object and purpose is likely to be defeated. Reliance is placed on the observations made by the Supreme

Court in para No.5 in the case of *Puran Singh and Ors Vs. State of Punjab and Ors. (supra)*.

5. In the present case, in para No. 3 of the application, the learned Advocate appearing for the applicant has stated that though the said Civil Application for bringing legal heirs on record was affirmed on 20th February 2019, however due to inadvertence, it could not be filed in the Court within the specified period. A copy of said application is also annexed to the present application in support of her contention.

6. Perusal of present application would indicate that, sufficient cause is made out for condonation of delay. In view thereof and in the interest of justice, delay is condoned and the application is allowed in terms of prayer clauses (a), (b) and (c).

7. Necessary amendment be carried out within a period of four weeks from today and an amended copy of the petition be served upon the learned Advocate for the respondents within the same stipulated period.

Application is allowed in the aforesaid terms.

8. At this stage, Mr. Ghandy, learned counsel for the proposed respondents submitted that, his clients intend to challenge the present Order before the Hon'ble Supreme Court and therefore, effect and implementation of the present Order may be stayed for a period of six weeks from today.

At his request effect and implementation of the present Order is stayed for a period of six weeks from today.

(A. S. GADKARI, J.)