

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13302 OF 2017**

M/s. Thakurdas Lalchand Patel & Ors. ... Petitioners

Vs

M/s. Shah Nagji Nenashi Motorwala & Ors. ... Respondents

Mr. Bhushan V. Deshmukh, Advocate for the Petitioners.

CORAM : SANDEEP K. SHINDE J.

DATE : August 14th, 2019

P.C. :

1. Heard learned counsel for the petitioners, who instituted Civil Suit No. 254 of 1999 in the Court of Civil Judge, Junior Division, Niphad.
2. Pending suit, defendant no. 2 died on 10.11.2007. It is only after perusal of Bailiff's report dated 26.02.2014, the plaintiff would know that the defendant no. 2 has passed away. Soon thereafter, the plaintiff had filed an application on 25.07.2014 to bring legal representative of the deceased defendant no. 2 on record and requested the Trial Court to set aside the order of abatement.

Learned Trial Judge declined to set aside the order of abatement, vide order dated 12.07.2017. It is against this order, the plaintiff has preferred Writ Petition under Article 227 of the Constitution of India.

3. Though the respondents are duly served, none appears. Heard learned counsel for the petitioners. Perused the impugned order.

4. Learned Trial Judge declined to set aside the abatement order on the grounds that there was inordinate delay on the part of the plaintiff to move the said application, which in fact is incorrect. As such, the plaintiff came to know the death of defendant no. 2, when he perused the Bailiff report on 26.02.2014 and thereafter he filed an application on 25.07.2014. Thus, it cannot be stated that there was inordinate delay.

5. That for the reasons stated above, the impugned order dated 12.07.2017 is quashed and set aside and the application below Exhibit 72 filed in Civil Suit No. 254 of 1999 is allowed. The petitioners shall carry out the consequential amendments within four weeks from the date of uploading this order.

6. Petition is allowed in the aforesaid terms and disposed of accordingly. All to act on the authenticated copy of this order.

(SANDEEP K. SHINDE, J.)