

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.627 of 2018
IN
CHAMBER SUMMONS NO.1058 OF 2016

Arun Nanalal Kothari ...Applicant
vs.
Suryakant Nanalal Kothari and Ors. ...Respondents

Mr. Rahul Karnik, for the Applicant.
Mr. V.R. Tripathi, for Respondent Nos. 1, 6 and 9.

CORAM : M. S. SONAK, J.

DATE : APRIL 18, 2019

P.C.:

. Despite order dated 11th December, 2018 it appears that the correct order has not been placed on record. However, today leave is granted to place correct order dated 23rd August, 2018 disposing of the Chamber Summons No. 1058 of 2016.

2. Heard Mr. Karnik, learned counsel for the Applicant and Mr. Tripathi, learned counsel for Respondent Nos. 1, 6 and 9.

3. The challenge in this Revision Application is to the impugned order dated 23rd August, 2018 by which the learned trial Judge has allowed the Chamber Summons taken out by the Respondents subject to payment of costs of Rs. 25,000/-.

4. At the outset it is clear that Civil Revision Application is not

maintainable against the impugned order in terms of Section 115 of the Code of Civil Procedure, however, this Civil Revision Application is not required to be dismissed on the said ground alone. Even upon exercise of supervisory jurisdiction under Article 227 of the Constitution of India, no case is made out to interfere in the impugned order.

5. Mr. Karnik submits that in the prayer clause of the Chamber Summons, the condonation of delay of 417 days was applied for to bring on record the legal representative of the deceased- Plaintiff No. 1. He points out that there is no such relief for appointment on this ground. He submits that the impugned order warrants interference. Mr. Karnik, also contends that there was no sufficient cause shown to condone the delay of 417 days. On this ground also, he submits that the impugned order warrants interference. He relied on the decision of this Court in ***Madhukar Ramchandra Keni vs. Vasant Jagannath Patil and Ors., 2013(4) Mh.L.J. 403*** in support of his contention.

6. Mr. Tripathi, learned counsel for the Respondents point out that the impugned order is already implemented and even otherwise there is absolutely no case is made out to interfere with the same.

7. According to me, if the prayer in the Chamber Summons are perused, it is very clear that Chamber Summons was for condonation of delay in bringing the legal representative of the deceased /Plaintiff No. 1 on record. Mere fact that there is no specific reference to setting aside of abatement, does not change the basic nature of the Chamber Summons or affidavit in support of the Chamber Summons. Relying upon such techniques, the Applicant cannot invoke either the revisional jurisdiction or the supervisory jurisdiction under Article 227 of the Constitution.

8. In ***Madhukar Keni*** (supra) the issue was that the suit which was already abated was sought to be revived by invoking the provision or Order 1 Rule 10 of CPC. The Division Bench held that this is not permissible. The facts in the present case are entirely different. The Respondents actually applied for condonation of delay in setting aside the appointment for bringing on record the legal representatives of the deceased/ Plaintiff No. 1. This is clear from the context of the reliefs claimed in the Chamber Summons and the affidavit in support thereof. Mere absence of word “abatement” or specific bar to set aside the abatement makes no difference. In any case, the impugned order permits substantial justice and the same cannot be interfered with on the basis of

hyper technical objections raised by the Applicant. Besides, in this case more than sufficient cause was shown by the Respondents for seeking condonation of delay of 417 days. Medical certificates are also produced on record. In any case since the learned trial Judge has exercised discretion in **Madhukar Keni** (supra) and no unreasonableness is shown. The impugned order cannot be interfered with in the exercise of extraordinary jurisdiction under Article 227 of the Constitution of India. This is on the basis of law laid down by the **N. Balakrishnan vs. M. Krishnamurthy, AIR 1998 Supreme Court 3222**. Besides, the constitution Bench of the Supreme Court, in the case of **Balakrishnan** (supra) held that in matters of setting aside of appointment and bringing heirs on record, the Courts are expected to adopt liberal approach because otherwise adjudication on merits will flout.

9. For all the aforesaid reasons, this Civil Revision Application is hereby dismissed with costs of Rs. 1,000/-.

(M. S. SONAK, J.)