

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2402 OF 2018

IN

NOTICE OF MOTION NO. 4351 OF 2009

IN

SUIT NO. 2174 OF 2009

Dr. Bhatia K. Jamnadas

& ors.

...Applicants

In the matter between :

Dr. Bhatia K. Jamnadas

& ors.

...Plaintiffs

Versus

Poonamchand N. Shah

& ors.

...Defendants

Mr.R.S. Apte, Senior Advocate a/w. Mr.H.K. Shenoy and Ms. Jayasree Pillai for applicants/plaintiffs.

CORAM : N.J. JAMADAR, J.

DATE : 3RD DECEMBER 2019

P.C.

1. Heard the learned Senior Counsel for the applicants.
2. This notice of motion is taken out to restore Notice of Motion No. 4351 of 2009, which was dismissed, by order dated 15th September 2015, as it was found that it won't survive post the abatement of suit against the defendant No.1, against whom the reliefs were sought in the said notice of motion.
3. The order dated 15th September 2015 reads as under :-

“1 The counsel for defendant no.1 states that defendant no.1 expired on 23.12.2012 and that was brought to the notice of the advocate for the plaintiffs soon thereafter. The plaintiffs have not taken any steps despite receiving the intimation and therefore the suit as against defendant no.1 stands abated. The counsel further states that the relief sought in the notice of motion no.4351 of 1999 also is only against defendant no.1, and therefore, the motion will also not survive.

The notice of motion no.4351 of 1999, therefore, is dismissed.”

4. The learned Senior Counsel for the plaintiffs points out that by a subsequent order dated 8th December 2015, this Court set aside the abatement order against the defendant no.1 and allowed the plaintiffs to bring the legal representatives of the deceased defendant No.1, on record. Accordingly, the legal representatives of the defendant No.1 have been brought on record.

5. It is abundantly clear that Notice of Motion No.4351 of 2009 was dismissed for the sole reason that the suit as against the defendant No.1 stood abated, as the reliefs in the notice of motion were sought against the defendant No.1 only. In view of the order, dated 8th December 2015, of setting aside the abatement and allowing

the plaintiffs to bring the legal representatives on record, the basis of the dismissal of the notice of motion, stands removed.

6. Thus, Notice of Motion No.2402 of 2018 is allowed. Notice of Motion No. 4351 of 2009 stands restored to file.

Notice of Motion No. 2402 of 2018 stands disposed of.

7. List the suit on 7th January 2020.

[N.J. JAMADAR, J.]