

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

INTERIM APPLICATION NO.01 OF 2019
WITH
INTERIM APPLICATION NO.02 OF 2019
WITH
INTERIM APPLICATION NO.03 OF 2019
WITH
IN PERSON APPLICATION NO.49 OF 2017
IN
SUIT NO.2932 OF 1992

Rhythima Shaily Shailendra and Others	...Applicants
<i>In the matter between</i>	
M/s. Anam Properties Private Limited	...Plaintiff
vs.	
Dinesh Shankar Shailendra and Others	...Defendants

Mr. Roop Vasudeo, for the Plaintiff.
Mr. P.G. Shinde, for Defendant Nos. 5A, 5B and 5C.

CORAM : N. J. JAMADAR
DATE : FEBRUARY 05, 2020

P.C.:

. These Applications have been taken out by Defendant Nos. 5A to 5C who came to be impleaded in the capacity of the legal representatives of the deceased Defendant No. 5 in pursuance of the order dated 16th April, 2014 for condonation of delay of 9940 days in filing the written statement and permission to file the written statement on behalf of the Defendant Nos. 5A to 5C.

2. The Applicants aver that defendant Nos. 5A to 5C were unaware of the fact that the deceased defendant No. 5 had not filed any written statement. Defendant No. 5 died in the year 2007 leaving behind widow and two minor daughters. Subsequently, defendant Nos. 5A to 5C got themselves impleaded as party Defendants by taking out Chamber Summons (L) No. 448 of 2014. When the matter was taken up for framing of the issues, the defendant Nos. 5A to 5C realized that there was no written statement. The defendants have a substantial defence and, in the event, the defendants are not allowed to file written statement, they would suffer irreparable loss as the Defendants claim that they have 1/6th share in the suit property.

3. The Plaintiff has resisted these Interim Applications by filing an affidavit in reply. It is contended that Defendant Nos. 5A to 5C got themselves impleaded as party Defendants by taking out Chamber Summons (L) No. 448 of 2014, which came to be decided on 16th April, 2014. Since then the matter appeared before the Court on a number of times. One of the

Applicants Rhythima Shaily Shailendra (Defendant No. 5C) is a practicing advocate and thus fully conversant with the Court process. Thus the ground that Defendant Nos. 5A to 5C were unaware of the fact that Defendant No. 5 had not filed any written statement is unworthy of acceptance. In substance, there is no cause, much less reasonable and sufficient, to explain the inordinate delay in filing the written statement. Hence, the Applications be rejected.

4. Heard the learned counsel for Defendant Nos. 5A and 5B and Defendant No. 5C in person and the learned counsel for the Plaintiff, at some length.

5. Evidently, Defendant No. 5 came to be impleaded as party Defendant to the Suit as and by way of abundant caution as it is averred in the Plaint that though the deceased Defendant No. 5 was not a party to the Memorandum of Understanding dated 5th March, 2019, of which specific performance is sought, yet he came to be impleaded as he is one of the legal representatives of the deceased Shakuntala Shailendra. Substantive reliefs sought by the Plaintiff are against Defdt. Nos.1 to 4. In the aforesaid

context, interim Applications are required to be considered.

6. The learned counsel for the Plaintiff was justified in advancing the submission that the applications lack necessary finesse in drafting and omnibus assertions have been made in the applications. However, the substance of the matter cannot be lost sight off.

7. The Defendant Nos. 5A to 5C got themselves impleaded as party Defendants by taking out Chamber Summons which came to be allowed on 16th April, 2014. The order does not indicate that this Court had stipulated any time for filing of written statement by Defendant Nos. 5A to 5C. Nor there was a direction for service of writ of summons on the then newly impleaded defendants. Defendant Nos. 5A to 5C claimed that the Defendant No. 5 was suffering from cancer and died leaving behind widow and two minor daughters. These factors are required to be taken into account appropriately. As Defendant Nos. 5A to 5C are entitled to take the grounds of defence which are appropriate to their character as legal representatives of the deceased Defendant No. 5, against whom the Plaintiff has not

sought substantive relief, it would be in the fitness of things to permit Defendant Nos. 5A to 5C to file the written statement. The delay is required to be restored from the date of their impleadment as party Defendants i.e. 16th April, 2014. For the aforesaid reasons, the delay deserves to be condoned. Hence, the following order:

(i) The delay in filing the written statement on behalf of Defendant Nos. 5A to 5C is condoned.

(ii) The Defendant Nos. 5A to 5C shall file the written statement within a period of one week from today and serve copy on the Plaintiff.

(iii) The Defendant Nos. 5A to 5C are however permitted to take only those grounds of defence which are appropriate to their character as the legal representatives of deceased Defendant No. 5.

(iv) The applications stand disposed of.

8. The suit be listed on 5th March, 2020.

(N. J. JAMADAR, J.)