

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3657/2016

(TAIBAI SHAMRAO CHOPADE & OTHERS VERSUS NAZMA PARVEEN LIYAQUAT ALI KHAN)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.K. Pillai, counsel for petitioners.
Shri M.M. Agnihotri, counsel for respondent.

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 09, 2019.

The challenge in the present writ petition is to the orders passed by the trial Court below Exhibits 1, 3, 13 and 14 as a result of which the suit filed by the respondent herein has been restored and after setting aside the abatement and condoning delay in bringing on record the legal heirs of the defendant no.1, the suit has been directed to be decided on merits.

The respondent had filed a suit for permanent injunction being Regular Civil Suit No.921 of 2008 against one Shamrao Chopde. During the pendency of the suit, the said defendant expired on 03.11.2012. Pursis to that effect came to be filed on 07.12.2012 by the counsel for the plaintiff. Thereafter for considerable period of time, no steps were taken to bring on record the legal heirs of the said defendant. Ultimately on 15.04.2015, the trial Court passed an order below Exhibit 1 disposing of the suit as having abated. Thereafter on 05.01.2016, the plaintiff filed the aforesaid applications for bringing on record the legal heirs of the defendant alongwith a prayer for setting aside the abatement and condoning the delay. These prayers were opposed by the legal heirs of the said defendant and by the impugned order, the trial Court proceeded to observe that the suit had been

disposed of as abated by an inadvertent mistake and therefore it was necessary to revoke that mistake. By order dated 25.01.2016, the proceedings in the suit were restored with a direction to the legal heirs to supply names of other legal heirs if they were not on record. Being aggrieved, the legal heirs of the defendant have filed the present writ petition.

Shri R.K. Pillai, learned counsel for the petitioner submitted that the plaintiff despite having full knowledge of the death of the original defendant did not take any steps whatsoever to bring on record the legal heirs. He referred to the *Roznama* of the proceedings to indicate that on various occasions the plaintiff through her counsel was present but no steps were taken to implead the legal heirs of the defendant. It was also not necessary to issue any notice on Court motion to the plaintiff. He referred to various applications on record and submitted that as the plaintiff was not diligent in taking necessary steps the trial Court was not justified in restoring the suit. According to him, the order dated 15.04.2015 directing abatement of the suit had been rightly passed when it was brought to the notice of the trial Court that the legal heirs of the defendant were not on record and hence there was no question of the defendant leading any evidence. The trial Court was not justified in restoring the suit. The learned counsel therefore submitted that the impugned order passed without considering the conduct of the plaintiff is liable to be set aside.

Shri M.M. Agnihotri, learned counsel for the respondent supported the impugned order. According to him, after the pursis came to be filed indicating the death of the sole defendant, the proceedings in the suit came to be transferred on various occasions to different Courts. As a result, it was not possible to take necessary steps for bringing on record the legal heirs. Referring to the *Roznama* of the proceedings and the dates on which the suit came to be transferred it was submitted that

the trial Court on realizing the fact that no notice on Court motion had been issued after the transfer of the suit, it was convinced that there was an inadvertent mistake in disposing of the suit. He referred to the decision in *Ratilal Jivanbhai Lalji Versus Kuvarben Chabildas Patel & Others* [2009(1) Mh.L.J. 770] in support of his contention that absence of such notice is a sufficient ground to condone the delay.

Heard the learned counsel and perused the *Roznama* of the case as well as perused applications placed on record. In the impugned order, the learned Judge of the trial Court has considered the progress of the suit and has then noticed that after the suit was transferred from one Court to another, there was no notice issued to the parties in that regard. It can be seen that the proceedings in the suit were initially with the Court on 21st Joint Civil Judge (Junior Division) and the same were transferred to the Court of 17th Joint Civil Judge (Junior Division) on 18.12.2012. Thereafter on 19.01.2013, the proceedings were transferred to the Court of 18th Joint Civil Judge (Junior Division). On 10.02.2014 and thereafter on 14.08.2014, the proceedings were again transferred. It is in that light that the trial Court has proceeded to observe that there was no such notice given though it was mandatory to do so. In *Ratilal Jivanbhai Lalji* (supra) it has been observed by this Court that non-communication of transfer of matters from one Court to another is a sufficient ground to condone the delay, if any.

Insofar as the steps being taken by the plaintiff to bring on record legal heirs of the sole defendant are concerned, though time was taken on behalf of the plaintiff for supplying the names of the legal heirs, it is the case of the plaintiff that she was not aware of names of all the legal heirs and hence some time was spent in that effort. All these grounds have been taken into consideration and the trial Court has also found that on 15.04.2015, though initially the suit was kept at the stage of recording of evidence of the defendant, it was subsequently disposed

of as abated which according to the Court was a mistake on account of heavy rush of work. It is not in dispute that the same learned Judge who had disposed of the suit as having abated realized the same and thereafter proceeded to restore the proceedings. Considering the reasons assigned in the impugned order, I do not find that any jurisdictional error was committed by the trial Court in restoring the proceedings. In that view of the matter, I am not inclined to interfere in writ jurisdiction.

The Writ Petition is dismissed. The parties to bear their own costs. However, the proceedings in the suit are expedited.

JUDGE

APTE