

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

IN ITS COMMERCIAL DIVISION

SUIT NO. 3433 OF 1997

Ajay Sohanlal Jhuria .. Plaintiff
Vs.
Durgaprasad R. Poddar .. Defendants
& Ors.

ALONG WITH
INTERIM APPLICATION NO. 1 OF 2019
AND
INTERIM APPLICATION NO. 2 OF 2019
IN
SUIT NO. 3433 OF 1997

Ajay Sohanlal Jhuria .. Applicant/Orig. Plaintiff

In the matter between :

Ajay Sohanlal Jhuria .. Plaintiff
Vs.
Durgaprasad R. Poddar .. Defendants
& Ors.

Mr.Kirit Modi i/b Bhaishankar Kanga Kanga & Girdharilal for applicant
in IA/1/2020 and IA/2/2020.

Mr.Farhan Dubash a/w. Ms. Harshal Manik and Mr. Praveer Shetty
i/b Res Legal for defendant Nos.3, 4 and 5(A).

CORAM : N.J. JAMADAR, J.

DATE : 28th JANUARY 2020

P.C.

INTERIM APPLICATION NO. 1 OF 2019
AND
INTERIM APPLICATION NO. 2 OF 2019

1. Interim Application No.2 of 2020 is taken out to set aside the

order dated 3rd December 2019 passed by this Court.

2. On 3rd December 2019, this Court had passed the following order :-

“2 By an order dated 5th November 2019, at the request of the learned counsel for the plaintiff, four weeks time was granted to take steps to bring the legal representatives of the deceased defendant No.5, Smt. Saroj Saraogi, on record. It was noted, in the said order, that the defendant No.5 has expired on 19th November 2018 and the said fact was informed to the learned counsel for the plaintiff.”

3. The plaintiff has taken out another interim application being Interim Application No.1 of 2020 to condone the delay in seeking setting aside the order of abatement and bringing on record the legal representatives of defendant No.5-Smt. Saroj Saraogi, who died on 19th November 2018.

4. It is averred in the application that the factum of death of defendant No.5 was informed to the plaintiff by the learned advocate for defendant No.5 vide letter dated 8th November 2019. Hence, there was delay in bringing on record the legal representative of defendant No.5-Smt. Saraogi.

5. The learned counsel for the proposed legal representative of

defendant No.5 has no objection to set aside the abatement and bring Smt.Richa Saraogi as the legal representative of defendant No.5 on record.

6. For the reasons assigned in interim applications, and to advance cause of justice, both the interim applications stand allowed.

The order dated 3rd December 2019, whereby the suit as against defendant No.5 came to be dismissed as abated and the resultant abatement of the suit on account of failure to bring the legal representative of defendant No.5, who died on 19th November 2018, stand set aside.

7. The plaintiff is permitted to bring the legal representative of defendant No.5-Smt. Richa Saraogi on record. The plaintiff shall amend the cause title of the plaint in accordance with the Schedule appended to Interim Application No.1 of 2019 within a period of three weeks. The plaintiff shall serve the amended copy of the plaint on all the defendants. The learned counsel waives writ of summons for newly impleaded defendant No.5A.

8. The learned counsel for defendant No.5A seeks eight weeks' time to file written statement on behalf of defendant No.5A.

9. Eight weeks' time is granted.
10. The suit be listed on 27th March 2020.

[N.J. JAMADAR, J.]