

Sharda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.7345 OF 2022

Smt. Pushpadevi Ratanlal SarafPETITIONER

V/s.

Mukesh Mahendra ManiarRESPONDENT

Mr. Jaydeep S. Deo, Advocate for the Petitioner
Ms. Swapnila Rane Advocate for the Respondent No. 1 to 4.

CORAM : NITIN W. SAMBRE, J.

DATE: JULY 1, 2022.

P.C.:

- 1) Original defendant in eviction suit expired on 4th November, 2015 i.e. after Suit was decreed and Appeal was preferred.
- 2) Said Appeal was prosecuted through Petitioner No.1-power of attorney who happens to be son of original defendant.
- 3) The lawyer who was representing the interest of the Petitioner/ his mother in the aforesaid Appeal informed to have expired in 2018.
- 4) As a sequel of above and in view of pandemic, there appears to

be failure on the part of the petitioner for moving an application for bringing legal heirs on record pursuant to provisions of Order XXII of Code of Civil Procedure, 1908.

5) After a delay of about four years, in the pending appeal, Petitioner has taken out Application Exhibit-23 for Condonation of Delay in bringing legal heirs on record and also permission to substitute legal heirs of original appellant. Said prayer is rejected vide order dated 18th December 2021. As such this Petition.

6) Submissions of Mr. Deo are, even if the original appellant has expired on 4th November 2015, Petitioner No.1-son continued to attend the proceedings in the Appeal through earlier advocate so also present advocate. According to him, there was failure to get proper professional advice that the LR's are to be brought on record by moving an independent Application under Order XXII of CPC. He would claim that delay caused of around four years in bringing legal heirs is unintentional and bonafide. So as to substantiate such claim, he would urge that though the Appeal was adjourned time and again, at no point of time adjournment was sought on the said count. As such, according to him, if the Petitioner is put to reasonable

conditions by ordering delay condonation, Appeal can be heard expeditiously.

7) Counsel for the Respondent would urge that order impugned is just and proper as the Petitioner No.1 who is daughter and a power of attorney of original appellant-defendant cease to have such right in law after her death i.e. on 4th November 2015. According to her, ignorance of law cannot be a good ground so as to seek condonation of delay. She would urge that for the default of the Petitioner, hearing of the Appeal was delayed unreasonably.

8) I have appreciated the submissions.

9) Court below while rejecting the prayer for Condonation of Delay has taken note of the fact that after the death of Appellant on 4th November 2015, hearing of Appeal was adjourned number of times, however none of the adjournment could be noticed on the part of the Petitioner for the cause of taking steps for bringing legal heirs on records. The fact that earlier lawyer rejecting the interest of the Petitioner has expired during pendency of the Appeal is also not in dispute. As a sequel, the claim that there was absence of professional advice in taking steps for bringing legal heirs on record appears to be

convincing.

10) In the aforesaid background, taking support from the judgment of *Rafiq and another V/s. Munshilal and another*¹ it will be appreciate in my opinion, to observe that Petitioner cannot be made to suffer for want of professional advice from his lawyer.

11) In this background, even if there is delay of about four years, in my opinion, case for condonation of delay for the aforesaid reasons is made out as the Petitioner No.1 appears to be continuously prosecuting the Appeal without he being there on record as LR's. As such order impugned dated 18th December 2021 passed below Exhibit-23 is hereby quashed and set aside. Application Exhibit-23 stands allowed subject to deposit of cost of Rs.25,000/- before the Small Cause Court within a period of two weeks from today. Respondent-plaintiff shall be entitled to withdraw the said costs.

12) Once the cost is deposited, Petitioner will be entitled to carry out amendment in the cause title of the Appeal by substituting the appellant.

13) Statement made by counsel for the Petitioner that the Appeal

¹ A.I.R 1981 Supreme Court Cases 1400

shall be argued expeditiously is also excepted as an undertaking. As such Appellate Court is requested to conclude the hearing of the Appeal within three months from today.

14) Parties here to agree that they shall appear before the Appellate Court on 7th July, 2022. As such fresh notice of hearing in the Appeal is dispensed with.

15) Writ Petition Stands allowed in the above terms.

[NITIN W. SAMBRE, J.]

IRESH SIDDHARAM
MASHAL

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