

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7697 OF 2022

Dhirajlal Raishi Chheda

Aged 65 years, Occupation : Business,
An adult, Senior Citizen, Indian Inhabitant,
Residing at Samavsaran Building,
M. G. Road, Ghatkopar (West),
Mumbai – 400 086.

... Petitioner

Versus

Mukesh Raishi Chheda,

Aged 56 years, Occupation: Business,
An adult, Indian Inhabitant,
Residing at Samavsaran Bldg., M. G. Road,
Ghatkopar (W), Mumbai – 400 086.

... Respondent

Mr. V. Y. Sanglikar a/w P. A. Sarwankar i/by M/s. Sarwankar and Co.
for the Petitioner.

Mr. Uttam S. Rane for the Respondent.

CORAM: ABHAY AHUJA, J.

RESERVED ON : 8th JULY, 2022

PRONOUNCED ON : 20th AUGUST, 2022

JUDGMENT :-

. Aggrieved by order dated 4th March, 2022 passed by the Court of Small Causes, Mumbai allowing Respondent's application at Exhibit 3 in Contempt Notice No. 5 of 2013 in RAD Suit No. 259 of 2004 for bringing on record the Respondent, as legal representative of his father in the said Contempt Notice, the Petitioner has filed this petition under Article 227 of the Constitution of India, 1950.

2. Brief facts leading to this petition are as under :-

3. The Petitioner Dhirajlal Raishi Chheda and the Respondent Mukesh Raishi Chheda are brothers and sons of late Mr. Raishi Shivji Chheda. Dhirajlal Chheda as Plaintiff had filed RAD Suit No. 259 of 2004 (the 'said suit') against his father Raishi Chheda who was the Defendant therein as Karta of his then HUF, seeking a declaration of his tenancy rights in respect of premises in Samavsaran Building at M. G. Road, Ghatkopar (West), Mumbai – 400 086. The Respondent supported his father and has also acted as constituted attorney of his mother in the said suit and was not originally made Defendant in the said suit.

4. The Plaintiff Dhirajlal Chheda in the said suit and Petitioner herein, in support of his case before the Trial Court had produced 36 rent receipts for the period from January 1993 to December 2000 which according to the Plaintiff-Petitioner were signed and executed by the Petitioner as constituted attorney of his father as per instruction of his father after payment of rent to him from time to time. It is the case of the Petitioner that since there were no instructions to affix revenue stamp by father, while issuing rent receipts from January 1993 to May 1993, Petitioner did not affix those stamps on the rent receipts; however, in June 1993, after the instructions of his father to do so, he affixed the revenue stamps on the rent receipts in respect of the said period in June 1993 to the knowledge of his father. The father who was the Defendant in the said suit had filed a written statement and had disputed the rent receipts as being forged and/or fabricated and/or manipulated. In the said suit which is pending, the Trial Court has framed the issues. The Defendant father in the said suit made an

application for sending the rent receipts to the India Security Press at Nashik for verification. The India Security Press submitted its report dated 26th May, 2011 stating that the revenue stamps of 20 paise which were made available for public use in April 1993 were genuine, suggesting that the same could not have been affixed on the rent receipts from January 1993. The father therefore took out a Contempt Notice No. 5 of 2013 in the said suit against the Petitioner – Plaintiff for allegedly producing fabricated, dubious, back dated and dishonestly self-generated rent receipts in support of his claim in the said suit. It is submitted that this act of the Petitioner-Plaintiff was squarely covered under the definition of Criminal Contempt under Section 2(c) of the Contempt of Courts Act, 1971 and therefore the Trial Court had registered contempt notice. During the pendency of the said Contempt Notice and the said RAD suit, the original Defendant father viz. Raishi Chheda died on 19th May, 2013. Thereafter, the Petitioner-Plaintiff took out an application (at Exhibit 70) in the said suit for bringing the mother of the Petitioner and the Respondent herein and the widow of the deceased Defendant viz. Mrs. Mithiben Raishi Chheda on record as legal representative of the original Defendant. The widow/ mother opposed the said application by filing a reply. It is stated that the said application was also served upon the Respondent herein and the Respondent had also opposed the said application by filing his reply. The application was finally heard by the Trial Court and the Trial Court allowed the said application on 27th February, 2014 by passing the following order :-

“

:ORDER:

1. *Application Exhibit – 70 is allowed.*

2. *Plaintiff is permitted to carry out amendment in the plaint as per the schedule annexed with this application.*
 3. *Plaintiff further directed to add the name of Mr. Mukesh Raishi Chheda as a defendant No.1(b) in the title of the Suit.*
 4. *if Plaintiff failed to join Mr. Mukesh Raishi Chheda as a defendant No. 1(b) within one month from the date of this order, then the said Applicant is at liberty to add his name in the title of suit as a defendant No. 1(b)."*
5. This order dated 27th February, 2014 passed by the Small Causes Court was challenged by the Petitioner-Plaintiff by preferring a Revision Application No. 99 of 2014 before the Appellate Bench of the Small Causes Court. The Appellate bench vide its order dated 10th April, 2014, rejected/dismissed Petitioner's application and confirmed the order dated 27th February, 2014 passed by the Trial Court. The order dated 27th February, 2014 passed by the Trial Court and the order dated 10th April, 2014 passed by the Appellate Bench were challenged by the Petitioner-Plaintiff before this Court in Writ Petition No. 5487 of 2014. Vide order dated 13th December, 2016, the matter was remanded back to the Trial Court. In the meanwhile, during the pendency of this writ petition, the mother/widow Mrs. Mithiben Raishi Chheda died on 30th October, 2015.
6. Pursuant to order dated 13th December, 2016, Petitioner-Plaintiff took out an application being Exhibit 86 in the said suit for carrying out the amendment and bringing the Respondent brother Mukesh as legal representative of the deceased original Defendant father. The Respondent filed a say and after hearing, the Trial Court allowed the said application vide its order dated 27th March, 2018 which is quoted as under :-

“ **ORDER**

1. *Application (exhibit no. 86) is allowed.*
2. *The plaintiff is directed to carry out amendment as per schedule A appended to the application on or before next date.”*

7. Thereafter, pursuant to the aforesaid order, Petitioner-Plaintiff amended the said RAD suit and brought Respondent brother Mukesh as Defendant in the said suit as legal representative of the deceased original Defendant father. Admittedly, the amended plaint had been served upon the Respondent brother vide advocate's letter dated 9th June, 2018. However, the Respondent could not file application within ninety days from the receipt of the said amended copy of the plaint for amending the Contempt Notice No. 5 of 2013 taken out by the deceased father Defendant in the said suit.

8. On 19th September, 2018, the Respondent herein (being legal representative of the original Defendant in the said suit) filed an application marked as Int. Notice Exhibit 3 of 2018 before the Trial Court seeking to condone the delay of twelve days and to allow the Respondent to be added as a party to the contempt notice and to carry out the amendments as contained in schedule A annexed to the said application. The Respondent pleaded a case of sufficient cause for condoning delay of twelve days citing orders dated 26th August, 2015 and 27th October, 2016 of this Court condoning the delay in taking out the amendment application on the issue of legal representatives in the then pending writ petitions against the Plaintiff/Petitioner herein as Respondent therein. The Petitioner herein had strongly opposed the said application of the Respondent by filing reply to the said

application. The Trial Court after considering the said pleadings allowed the application filed by the Respondent herein vide order dated 4th March, 2022, which is quoted as under :-

“ **ORDER**

1. *The application is allowed, delay is condoned and abatement order is set aside.*
2. *The applicant shall carry out the necessary amendment in the contempt notice accordingly.”*

9. It is this order dated 4th March, 2022 that is the subject matter of challenge in this petition.

10. Mr. Sanglikar, learned counsel for the Petitioner would submit that the said application pursuant to which the impugned order came to be passed was opposed by Petitioner taking the following objections :-

- (a) Contempt Notice No. 5 of 2013 was a separate proceeding ordered to be registered separately and registered as separate proceeding;
- (b) since, father had died on 19.05.2013, delay in filing application was of over 5 years and 4 months and that the delay was not of 12 days;
- (c) there was no explanation to all regarding delay of 5 years and 4 months;
- (d) no cause was shown for condoning delay of 5 years and 4 months;
- (e) the Respondent had earlier refused the character as LR of his father;
- (f) Contempt Notice No. 5 of 2013 had abated for not taking steps, as per case status report on (pg. 114 – 115);
- (g) in any event, as per Contempt of Courts Act, 1971, no reference can be made after one year;

(h) under stamp act, defect is curable.

11. He would submit that ignoring all the aforesaid objections on behalf of the Petitioner, the Trial Judge allowed the application of the Respondent.

12. Learned counsel submits that firstly the application suffers from a delay of five years and four months as the Defendant father had died on 19th May, 2013 and not twelve days as claimed by the Respondent. There has been no explanation of whatsoever nature for this inordinate delay. He would submit that there is no cause much less sufficient cause shown for condonation of delay of five years and four months. He would submit that since 2013, the Respondent was denying his status as legal representative of his father under Order 22 of the Code of Civil Procedure (CPC) in various proceedings since 2013 to 2018 and had also claimed independent rights under Order 1 Rule 10 of the CPC. No steps were taken when he was attending as constituted attorney of mother who was joined as legal representative in the said suit in the year 2014. Learned counsel submits that infact the contempt notice itself had abated in the year 2013. Learned counsel would further submit that the contempt notice was ordered to be registered as a separate proceeding and was being listed on different dates from the said suit and that it had no connection with the said suit.

13. He submits that in the RAD suit which is still pending there was no finding of the Court that the rent receipts were forged or fabricated; there was only defect in stamping, if any, which could be cured before admitting evidence, as a document cannot be invalidated due to defect in stamping. He would submit that where an allegation constitutes an

offence under the Indian Penal Code ('IPC'), the same is not contempt. Learned counsel also refers to proviso to Section 10 of the Contempt of Courts Act in support of his contention as well as to the decision of the Rajasthan High Court in case of ***State of Rajasthan v/s. Hans Raj Singh and Ors.*** (DB Criminal Contempt Petition No. 11/93 decided on 23rd May, 1994). He submits that the allegations in the contempt notice are of forgery, fraud and fabrication which are offences under Sections 192, 463, 464 etc of the IPC and therefore a contempt notice is not maintainable.

14. Without prejudice, he would further submit that the limitation provided under Section 20 of the Contempt of Courts Act is one year from the date of actual contempt whereas the action is sought to be initiated in the present case long after one year.

15. In support of his contentions, learned counsel relies upon the following decisions :-

- (i) ***Om Prakash Jaiswal v/s. D. K. Mittal and Anr., (2000) 3 SCC 171.***
- (ii) ***M/s. Golchha Advertising Agency v/s. The State of Maharashtra and Anr., 1990(2) Bom.C.R. 262.***
- (iii) ***Yashodabai w/o Kanhayyalal Purushottamdas Saraf v/s. Narayandas Gokuldas Saraf and Ors., 1992(1) Bom.C.R. 259.***

16. Learned counsel submits that therefore the petition be allowed and the impugned order dated 4th March, 2022 be set aside.

17. On the other hand, Mr. Rane, learned counsel for the Respondent brother Mukesh at the out set would submit that the present writ petition filed by the Petitioner herein is nothing but an attempt to

interfere with and obstruct the course of administration of justice and the Petitioner has also polluted the stream of justice delivery system by committing gross abuse of process of this Court and therefore the petition is liable to be dismissed with costs.

18. It is submitted that the Respondent is the younger son and the legal representative of the deceased father who was the original Defendant in the said suit. That Petitioner has prepared approximately 429 back dated rent receipts in respect of 5 different premises behind the back of the deceased Defendant solely signed, stamped and executed by him by abusing the power of attorney granted to him and as such the same is serious offence and Petitioner squarely falls within the definition of Criminal Contempt as contained in Section 2(c) of the Contempt of Courts Act, 1971. It is after considering the facts and circumstances of the case, that the Trial Court has registered the contempt notice filed by the original Defendant.

19. Coming to the issue of delay, it is submitted that the Respondent could not have had locus to step into the shoes of the deceased Defendant in the Contempt Notice, unless and until he was recognised as a legal representative and substituted in the main RAD Suit No. 259 of 2004. That the first order dated 27th February, 2014 passed by the Trial Court on Petitioner's amendment was challenged by the Petitioner and which reached finality only on 27th March, 2018 whereby the Petitioner was directed to carry out amendment *inter-alia* bringing the Respondent being son of the deceased Defendant as legal representative of the original Defendant in the said suit. The amendment bringing Respondent as legal representative to the said suit

was carried by the Plaintiff – Petitioner on 10th April, 2018 and an amended copy of the plaint in the said suit was served upon the Respondent through Petitioner's / Plaintiff's advocate letter dated 9th June, 2018. It is only after such service that Respondent could have made an application in the contempt notice and not otherwise. Therefore, the delay in filing the application for amending the notice is only twelve days and the Respondent had shown sufficient cause for condoning the said delay, which was rightly condoned by the Trial Court and the Respondent's application allowed. It is urged by the learned counsel that by raising such frivolous contentions before this Court, the only intention of the Petitioner is to abate the contempt proceedings filed by the original Defendant against the Petitioner. As the Petitioner has submitted fabricated, dubious, back dated and dishonestly self generated rent receipts claimed in the said RAD suit which is clearly borne out by the verification report dated 26th May, 2011 of the India Security Press, Nashik, such act of the Petitioner is squarely covered under the definition of criminal contempt under Section 2(c) of the Contempt of Courts Act.

20. It is submitted that the issue of contempt notice is pending before the Trial Court which alone has jurisdiction to decide the same. The issue involved in the present writ petition is limited to the extent of the application filed by the Respondent marked as Exhibit 3 in the said suit to bring him as a legal heir of the deceased on record and not to decide the issue of the contempt notice.

21. With respect to the judgments referred to and relied upon by the Petitioner, it is submitted that the same are not applicable to the facts of

the present case as the issue of Contempt Notice is pending with the Trial Court and this Court cannot decide the said issue in the present writ petition. The issue involved in the present writ petition is the limited to the extent of the application filed by the Respondent marked as Exhibit 3 before the Small Causes Court to bring him as a legal heir of the deceased on record. Hence, the judgments relied by the Petitioner have no relevance in the present case.

22. Further, it is submitted on behalf of the Respondent that this Court and the Hon'ble Supreme Court have time and again held that Rules of procedure are hand maiden to the ends of justice and that the paramount consideration under the scheme of the rules is to achieve justice rather than frustrate rights of the parties on technical grounds particularly when the rights of the other party can be protected by such terms as may appear in the opinion of the Court to be just and proper. The Respondent in his said application (Int. Notice Exhibit No. 3 of 2018) *inter-alia* in paragraph no.9 at page no. 119 of this writ petition pleaded the two orders of this Court wherein the delays were condoned by this Court between the same parties herein.

23. It is submitted that the balance of convenience lies in favour of the Respondent and against the Petitioner. The Petitioner will suffer no prejudice in the event this Court allows the Respondent as legal representative of the deceased Defendant in the contempt notice. On the other hand, Respondent shall suffer grave prejudice and tremendous hardship in the event this Court allows the petition.

24. It is submitted that the impugned order under challenge passed by the Trial Court is valid, correct and lawful and does not require any

interference of whatsoever nature and the Petition being without merit deserves to be dismissed with exemplary costs.

25. I have heard Mr. Sanglikar, learned counsel for the Petitioner and Mr. Rane, learned counsel for the Respondent and with their able assistance, I have perused the papers and proceedings and given my thoughtful consideration to the matter.

26. Facts are not in dispute. Although, there is an attempt on behalf of the counsel for the parties to get this Court to adjudicate on merits not only with respect to the said RAD suit but also with respect to Contempt Notice No. 5 of 2013 and its maintainability, keeping in mind the supervisory nature of the jurisdiction that can be exercised under Article 227 of the Constitution of India that cannot be permitted. The narrow issue in this Petition revolves around the order dated 4th March, 2022 condoning the delay of twelve days and for carrying out the amendment adding the Respondent as party Defendant as legal representative of the original deceased Defendant Mr. Raishi Chheda in interim Contempt Notice No. 5 of 2013 passed in application at Exhibit 3 made by the Respondent herein.

27. Mr. Sanglikar, learned counsel for the Petitioner has submitted that the delay is of five years and four months and that the contempt notice being a separate proceeding, the Respondent ought to have made an application for being made a party to the said contempt notice upon the demise of the Defendant father on 19th May, 2013. He submits that therefore such inordinate delay could not have been condoned and the impugned order deserves to be set aside. Whereas, Mr. Rane, learned counsel for the Respondent submits that the delay is only of twelve

days and there is sufficient cause for condoning the same. It is not in dispute that pursuant to the order dated 27th February, 2014 which attained finality only on 27th March, 2018, Respondent was made party to the RAD suit. In my view, it is only natural and logical that after the Respondent was made a party to the main suit that he would have locus to become a legal representative in the contempt notice proceeding. That is the logical course of proceedings and any other view would lead to absurdity. Once the Respondent was made a party to the said RAD suit and copy of the amended plaint was served upon the him vide Petitioner's advocate letter dated 9th June, 2018, the Respondent ought to have made an application in the contempt proceeding within ninety days but could not do so and did so only after twelve days. A perusal of the application dated 19th September, 2018 by the Respondent clearly indicates that not only the delay has been explained but there is also an appropriate prayer seeking condonation of delay. It has been held by the Apex Court in ***Banwari Lal (dead) by Legal Representatives and Anr. v/s. Balbir Singh, (2016) 1 SCC 607*** that it would be unjust to non-suit a party on the ground of technicalities. Further, a five Judge Bench of the Apex Court in case of ***Sardar Amarjit Kalra v/s. Pramod Gupta and Ors., (2003) 3 SCC 272*** has observed as follows :-

“26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaiden of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their

continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any substantial justice claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in the jamabandi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even dehors the cause for the delay in filing the applications keeping in view the serious manner in which it would otherwise jeopardize an effective adjudication on merits, the rights of the other remaining appellants for no fault of theirs. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bringing on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of the Court to do real, effective and substantial justice..."

28. Keeping in mind the aforesaid principles settled by the Apex Court, condonation of delay of twelve days for sufficient cause by the Trial Court cannot be faulted with. There is no reason to interfere with the order condoning the delay and setting aside the abatement directing the applicant to carry out the necessary amendment in the proceeding of Contempt Notice No.5 of 2013 as per the schedule to the application.

29. In view of the above discussion, I find that there is no jurisdictional error on the part of the learned Trial Court nor any illegality or perversity in the impugned order dated 4th March, 2022

passed by the Trial Court allowing Respondent's application at Exhibit 3 in Contempt Notice No. 5 of 2013 for bringing on record the Respondent, as legal representative of his father. The impugned order is an interlocutory order and entertaining the prayers of Petitioner would not further the cause of substantial justice. The learned Trial Court has fairly allowed the application for bringing on record the Respondent, as legal representative of his father and no case is made out for interference with the said order. Needless to observe that if the Trial Court gives a decision which is adverse to the interest of Petitioner, Petitioner can always agitate the same in appropriate proceedings.

30. It is therefore not necessary to deal with the other contentions raised on behalf of the parties or the judgments relied upon on their behalf. The Writ Petition is dismissed with no order as to costs.

31. It is made clear that this Court has not given any finding on the facts/merits of the said suit or the said Contempt Notice or its maintainability. The reasons given herein are only for the purposes of deciding the present petition. All contentions/issues on the merits of the suit as well as the said Contempt Notice are kept open. Interim orders, if any, stand vacated. All concerned to comply with the directions contained in the order dated 4th March, 2022 of the Trial Court in Respondent's application at Exhibit 3 in Contempt Notice No.5 of 2013 for bringing on record the Respondent, as legal representative of his father.

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[ABHAY AHUJA, J.]