

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

WRIT PETITION NO.15217 OF 2022

Vishakha Laxman Natekar
(since deceased) through Lrs.

Shubha Shantaram Pawar and Ors.

.. Petitioners

Versus

Mumbai Municipal Corporation and Ors.

.. Respondents

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- Mr. Syed Zia a/w. Ms. Bhavna Dube Patil i/by Jay & Co. for Petitioners
 - Mr. Om Suryawanshi for Respondent No.1
 - Mr. Sandeep Janardanrao Ghogare for Respondent No.2

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 16, 2022.

P.C.:

1. Heard Mr. Zia, learned Advocate for Petitioners.
2. Perused the impugned order dated 25.08.2022 passed by the learned Trial Court below Exh. 8. By the said Application, Plaintiffs (Petitioners herein) sought two weeks time for carrying out the amendment. This Application remained pending for more than three years. Considering that in the Application, it was mentioned that two weeks time was prayed for carrying out the amendment and that two weeks time was already over, the Application was disposed of as infructuous by the learned Trial Court.
3. Admittedly, there is a delay on the part of the Plaintiffs i.e. Petitioners to carry out the amendment. Petitioners are legal heirs of the deceased Plaintiff.

4. Mr. Zia, learned Advocate for Petitioners has urged that by order dated 04.04.2019, Chamber Summons was partly allowed and in terms of that order, amendment was necessitated and allowed by the Trial Court. He submitted that due to extraordinary situation of Covid pandemic, admittedly there was delay on the part of Petitioners to carry out the amendment. That the Application for carrying out the amendment within two weeks was filed on 07.06.2019. He fairly submitted that the said Application remained pending. That thereafter because of Covid pandemic, nothing could be done until the said Application was dismissed as infructuous by the impugned order dated 25.08.2022.

5. Learned Advocate for Respondent No.2 has vehemently opposed the grant of any relief in the present Petition on the ground that Petitioner has not shown any adequate/sufficient cause before the learned Trial Court. He submitted that all that the Petitioner has stated is that owing to her old age, she was unable to carry out the amendment.

6. I have perused the record of the case. Submissions made by learned Advocates are in due consideration of the Court. Perused the application seeking extension for compliance to carry out the amendment which is at page 78 annexed to affidavit-in-reply of Respondent No.2. Paragraph No. 3 of the application gives the reason that Petitioner i.e. Plaintiff No.1 is a senior citizen and her age is 80

years and owing to her age she could not to carry out the amendment. Necessary amendment was to be carried out though it is not pleaded in so many words. That apart, under *suo moto* orders of the Supreme Court in Civil Writ Petition No. 3 of 2010, M.S.C. Application No. 665 of 2021 and M.C.A. No. 21 of 2022, the Supreme Court has already passed orders to exempt the period from 15.03.2020 to 20.02.2022 from limitation. That benefit would also be available to the Petitioner in the present case. In that view of the matter, the learned Advocate for Petitioner has fairly submitted that though amendment was necessitated by the order of the Trial Court, it could not be carried out. Admittedly, he has agreed to the delay. I find that the reasons given in the application are adequate enough for the Court to consider the same. Hence the impugned order which does not give any reason is passed with complete non application of mind and deserves to be set aside. Hence, impugned order dated 25.08.2022 is set aside.

7. Petition is allowed in terms of prayer clause 13(II), subject to Petitioners paying cost of Rs.5,000/- to Kirtikar Law Library, High Court, Mumbai within a period of two weeks from today; receipt of which shall be produced on the record of this Petition.

[MILIND N. JADHAV, J.]

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