

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

APPEAL FROM ORDER NO.39 OF 2020
WITH
INTERIM APPLICATION NO. 3442 OF 2019
in
APPEAL FROM ORDER NO.39 OF 2020

Amit Hiralal Pal & Ors. ..Appellants

v/s.

Mr. Harkesh Motilal Pal & Ors. ..Respondents

Mr. Anil Mishra i/b. U.V.Singh for the Appellant.

Mr. Vijay Bhadkamkar for the Respondent No.1.

Mr. Om Suryavanshi for the Respondent Nos.2 and 3 MCGM.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 1st MARCH, 2022.**

P.C.

1. With consent, heard finally at the stage of admission.
2. The Appellants herein who were the Original Defendant No.3B, 3C and 3E have filed this Appeal challenging the Order dated 7.11.2019 whereby the learned Judge of City Civil Court, Gr. Bombay has dismissed the Notice of Motion No. 3839 of 2019 in Suit No.2891 of 2011, and thereby rejected the prayer to allow

them to file the written statement and to adduce evidence.

3. Heard learned Counsel for the Appellant and the learned Counsel for the Respondents. I have perused the records and considered the submissions advanced by learned Counsel for the respective parties.

4. The records indicates that the father of the present Appellant who was Defendant No.3 in the suit had expired during the pendency of the Suit. He had filed his written statement, and after considering the pleadings the trial Court had framed the issues and recorded evidence of the Plaintiff. The Defendant No.3 had filed his affidavit-in-evidence on 7.2.2019 and the matter was adjourned for his cross-examination, however cross examination could not be recorded in view of his death. Subsequently, an application was filed for bringing on record the legal representatives of the deceased Defendant No.3, which was allowed on 29.07.2019 and the Respondent-Plaintiff was directed to amend the cause title. The matter was adjourned on 5.8.2019 and again on 20.08.2019 for compliance of the said order. On the

adjourned date of hearing i.e. on 19.09.2019, the trial Court closed the evidence of legal representatives of Defendant No.3 and of Defendant No.4 in view of their absence and for want of adjournment application.

5. It is true that the Courts are under obligation to dispose of the suits expeditiously. It is however to be borne in mind that while making an endeavor to achieve the object of speedy justice, the Courts should not shut the doors of justice on mere technicalities or decline adjudication on merits. In the instant case, the legal representatives of Defendant No.3 had defaulted only on one occasion. They had not adopted dilatory tactics. Considering this fact, the trial court ought to have adopted pragmatic and not pedantic approach which has resulted in miscarriage of justice.

6. As regards the prayer for allowing the legal representatives of Defendant No.3 to file written statement or to adopt the written statement of Defendant No.3, it is to be noted that Order XXII Rule 4(2) enables the legal representative of the deceased Defendant

to make any defence appropriate to his character as legal representative of the deceased Defendant. In the instant case, the Defendant No.3 had already filed the written statement. The legal representatives of the deceased Defendant No.3 are bound by the pleadings of their predecessor in whose place they are substituted. They cannot set up a new and inconsistent plea contrary to the one taken by the deceased Defendant. They must proceed with the litigation from the stage which was at the time of the death of the Defendant No.3. As noted above, the Defendant No.3 had filed his affidavit but he had expired before his cross-examination could be recorded. The legal representatives of the deceased Defendant No.3 are therefore entitled to file their affidavit of evidence and adduce evidence on the basis of the pleadings of their predecessor.

7. Under the circumstances, the impugned order to the extent of rejecting the prayer for allowing the Defendants to adduce evidence is set aside. The parties are directed to appear before the trial Court on 14.3.2022. The trial Court shall record the evidence and dispose of the matter in accordance with law.

8. Appeal from Order and Interim Application stands disposed
of.

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(ANUJA PRABHUDESSAI, J.)