

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13939 OF 2022

Amruta Amit Awasare @

Vanashri Ashok Vaidya

...Petitioner

Versus

Madhav Moreshwar Vaidya & Ors.

...Respondents

...

Mr. Kuldeep U. Nikam for the Petitioner.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 30 JUNE 2023.

P.C.:

By this petition filed under provisions of Article 227 of the Constitution of India, petitioner challenges order dated 9 December 2019 passed by the Civil Judge Junior Division, Dapoli allowing applications at Exh.85 (for condonation of delay), Exh.87 (to set aside abatement) and Exh.89 (amendment of plaint to bring on record legal heirs of Defendant No.9).

2. Petitioner is the first Defendant in suit instituted by Plaintiff / Respondent No.1 seeking partition. During the course of cross-examination, a question was asked to the Plaintiff on behalf of the Petitioners / Defendant No.1 as to whether the Plaintiff was aware about

the death of Defendant No.9 to which Plaintiff answered in the affirmative. He moved an application Exh.77 seeking amendment of the plaint *interalia* to bring on record legal heirs of Defendant No.9 and also for addition of a new Defendant (Defendant No.16). By order dated 26 November 2019 the Court partly allowed the application at Exh.77 for addition of Defendant No.16. So far as the prayer for bringing legal heirs of Defendant No.9 was concerned the court observed that the Plaintiff had failed to disclose exact date of death of Defendant No.9 and on that ground, the application was rejected.

3. It appears that the Plaintiff moved another application at Exh.80 on 3 December 2019 to bring legal heirs of Defendant No.9 on record. However the said application was withdrawn. Thereafter Plaintiff filed 3 various applications on 6 December 2019. Application at Exh.85 was filed for condonation of delay in bringing legal heirs of Defendant No.9 on record. Application at Exh.87 was filed for setting aside the abatement against Defendant No.9. Application at Exh.89 was filed for amendment of the plaint to bring on record legal representatives of deceased Defendant No.9. The applications were resisted by Petitioners / Defendant No.1. By separate order passed on 9 December 2019 the Trial Court has proceed to allow all the 3 applications.

4. Mr. Nikam the learned counsel appearing for Petitioner would submit that the reasons pleaded in application at Exh.85 are at

variance with the reasons which was pleaded in the earlier application Exh.77. The last submission of Mr. Nikam is that there is violation of Rule 96 of the Civil Mannual which mandates issuance of notice to the proposed legal heirs before bringing them on record. He would submit that no such notice was issued by the Appellate Court to the proposed legal heirs of Defendant No.9 before allowing the application.

5. After having heard the learned counsel appearing for the Petitioner, it is seen that the suit is instituted by the Plaintiff for partition. Defendant No.9 is undoubtedly one of the relatives of Plaintiff and Defendant No.1. The suit is pending since year 2012. Defendant No.9 has expired on 3 February 2015. There was undoubtedly long delay in filing application for bringing legal heirs of Defendant No.9 on record. It is also seen that the Plaintiff gave an admission in his cross-examination that he had knowledge about death of Defendant No.9 on 3 February 2015.

6. However it must be borne in mind that the suit is for partition and therefore presence of all the affected parties before the Court is of utmost importance. Therefore though the plaintiff may be guilty of delay in filing the application for bringing on record legal heirs of Defendant No.9, that alone could not have been a ground for rejection of the application. The Lower Court has considered the fact that presence of legal heirs of Defendant No.9 would enable the Court for effectively

and completely adjudicate all the issues involved in the suit. Therefore I do not find any error being committed by the Lower Court in condoning the delay in filing application for bringing legal heirs of Defendant No.9 on record.

7. So far as ground of variance in the reasons pleaded in application at Exh.77 and Exh.85 is concerned, it is seen that the Plaintiff had filed a composite application at Exh.77 which was titled as 'Application for Amendment'. He made two prayers for impleadment of Defendant No.16 as well as for bringing legal heirs of Defendant No.9 on record. It appears that on account of the fact that composite application was filed, Plaintiff did not disclose the date of death of Defendant No.9 nor disclosed adequate reasons for condonation of delay in filing the application. Therefore mere rejection of the application at Exh.77 or the variance in the reasons pleaded for seeking condonation of delay could not have been a ground for the Trial Court to reject the application at Exh.85.

8. Coming to the last point pleaded by Mr. Nikam, it is seen that the legal heir of Defendant No.9 is not aggrieved by the orders dated 9 December 2019. He has not complained about failure to grant opportunity of being heard before allowing application for bringing him on record as legal heir of Defendant No.9. I failed to understand as to how Defendant No.1 is aggrieved by non issuance of notice to the legal

heir of Defendant No.9. Therefore even if it is assumed for the sake of arguments that there is a technical breach of Rule 96 of Civil Manual, that alone could not be a reason for this court to interfere in its extraordinary jurisdiction.

9. Resultantly I do not find any merit in the petition filed by the petitioner. Writ Petition is accordingly dismissed with no order as to costs.

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SANDEEP V. MARNE, J.