

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4209 OF 2022

Machhinder Dashrath Gaikwad & Anr.

.. Petitioners

Versus

~~Tulsiram Bapu Mojad~~

(since deceased) through Legal Heirs

~~Sakhubai Tulsiram Moraj~~ (deceased)

Sumanbai Tulsiram Mojad & Ors.

.. Respondents

.....

- Mr. Sangram L. Suryavanshi a/w Mr. Sunil S. Sonawane for Petitioners
- Mr. H.D. Chavan for Respondent No. 4

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 06, 2023

P.C.:

1. Heard Mr. Suryavanshi, learned Advocate for Petitioners and Mr. Chavan, learned Advocate for contesting Respondent No. 4.

2. Present Writ Petition takes exception to the order passed below Exh. 57 in R.C.S. No. 359 of 2018. Admittedly, Respondent No. 1 – Sakhubai Tulsiram Mojad expired on 05.06.2019 and her legal representatives were to be brought on record. Mr. Suryavanshi, learned Advocate for Petitioners would contend that the date of demise of Respondent No. 1 – Sakhubai Tulsiram Mojad came to their knowledge on 26.01.2020 and in that view of the matter, they filed an Application for bringing the legal heirs of deceased Sakhubai Tulsiram Mojad on record on 07.02.2020. The impugned order dated

10.12.2021 passed below Exh. 57 merely records that the Application ought to have been filed within the stipulated / prescribed period of 90 days and considering that the same has been filed beyond 90 days and no explanation for condonation of delay has been given, the said Application deserved to be dismissed. On this sole ground, the Application has been dismissed by the learned Trial Court.

3. The Application was strongly resisted by the contesting Defendant Nos. 4 and 6 before the learned Trial Court on the ground that there was admittedly a delay of 8 months for filing the said Application and in that view of the matter, the proceedings had abated in the meanwhile.

4. Mr. Suryavanshi has drawn my attention to the pleadings in the Writ Petition and more specifically paragraph No. 8 at page No. 7 wherein satisfactory explanation of delay has been provided. It is contended by Mr. Suryavanshi that the Application filed below Exh. 57 has categorically states that immediately after gaining knowledge of demise of Respondent No. 1 – Sakhubnai Tulsiram Mojad, the Application came to be filed within the prescribed period. Though admittedly adequate details which appear in paragraph No. 7 of the Writ Petition have not been stated in the Application, it needs to be seen that the Petitioners have filed the present Application without much delay on gaining knowledge about the demise of Sakhubai

Tulsiram Mojad. Undoubtedly, the Petitioner cannot be ousted considering that Sakhubai was impleaded in place of the original Defendant – Tulshiram Bapu Mojad as his legal heir.

5. In view of the above, the impugned order dated 10.12.2021 is not sustainable and deserves to be set aside. Hence, Writ Petition is allowed in terms of prayer clause (c). Necessary amendment shall be carried out within four weeks from today.

6. At the joint request of both the learned Advocates, the learned Trial Court is requested to decide R.C.S. No. 359 of 2018 within a period of 12 months from today.

[MILIND N. JADHAV, J.]

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