

Arjun

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

WRIT PETITION NO.3354 OF 2023

Smt. Neilanuo Cherie Gonsalves & Ors. ...Petitioners

V/s.

Kali Savak Santoke & Anr. ...Respondents

Mr. Charles D'souza a/w Shivam Laturiya & Utkarsh Sanadi i/b APS Law Associates, for the Petitioners.

Mr. Akif Patel a/w Amaan Khan & Daood Khan, for Respondent No.1.

CORAM : MADHAV J. JAMDAR, J.

DATE : 23rd MARCH, 2023

P.C.:

1. Heard learned counsel appearing for the Petitioners and learned counsel appearing for Respondent No1.

2. By the impugned order dated 17th February, 2023 passed by the learned Appellate Bench of the Small Causes Court at Mumbai in Misc. Appeal No.148 of 2022, the order dated 15th March, 2022 passed by the learned Trial Court in MARJI Application No.5 of 2021 in R.A.E. & R. Suit No.832/1891 of 1995 was set aside and the said MARJI Application was allowed, subject to costs of Rs.1000/- to be

paid to each contesting Respondent.

3. The learned Trial Court by the said order dated 15th March, 2022 rejected the said MARJI Application for condonation of delay and restoration of the suit.

4. Factual position on record clearly shows that, the suit was filed by the original Plaintiff who is the sister of the present Respondent No.1. The original Plaintiff passed away on 8th January, 2013.

5. It is the contention of the Respondent No.1 in the said MARJI Application No.5 of 2021 that, he traveled to USA in October, 2011. On 19th March, 2012 he was arrested by USA Zanesville Police. When he was in jail, his sister i.e. original Plaintiff passed away on 8th January, 2013. He was convicted on 13th June, 2013. On 28th March, 2019, he completed his sentence of seven years of imprisonment. Thereafter, he was again taken into custody by the Department of Homeland Security for violation of immigration laws. After serving in second sentence, he was deported from USA to Amritsar on 21st October, 2020 when the Covid-19 was in full swing. He was admitted to Jupiter Hospital, Thane on 3rd November, 2020. He got discharged on 8th November, 2020, and,

thereafter, he filed MARJI Application.

6. Learned Trial Court dismissed the said Application on the ground that, no authenticated or certified copies of the orders passed by the USA Court were produced.

7. However, the learned Appellate Court has considered ordinary copy produced by the Respondent No.1. The Appellate Court also verified the fact of deportation from the passport of the Respondent No.1.

8. While condoning the delay, *inter alia*, it has been observed by the Appellate Court that the approach of the learned Trial Court is hyper technical and further that, there is no reason for the Respondent No.1 to present himself as offender convicted by the foreign Court falsely.

9. Therefore, interference by this Court under Article 227 of the Constitution of India is not warranted. As far as cost awarded by the learned Appellate Court of Rs.1000/-, learned counsel appearing for the Respondent No.1 states that, Respondent No.1 has no objection, if the same is enhanced. The Respondent No.1 shall pay cost of Rs.10,000/- to each of the Petitioner instead of Rs.1000/- as awarded by the learned Appellate Court.

10. The Writ Petition is dismissed subject to above.

[MADHAV J. JAMDAR, J.]