

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3594 OF 2015

IN

FIRST APPEAL NO 1059 OF 1997

Mukesh Raishi Chheda and Anr.

...Applicants

IN THE MATTER BETWEEN

Raishi Shivji Chheda

...Appellant

Versus

The Municipal Corporation of Gr. Bombay

...Respondent

YUGANDHARA
SHARAD
PATIL

Mr. Uttam Rane , Advocate for the Applicants.

Mr. R.Y. Sirsikar, Advocate for the Respondent-MCGM.

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YUGANDHARA
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Date: 2023.12.15
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CORAM: M.M.SATHAYE J.

DATE : 12th DECEMBER, 2023

PC. :

1. This is an Application by the Applicants for bringing them as legal heirs of sole Appellant Mr. Raishi Shivji Chheda on record. This Application is apparently filed in the year 2015, however, till date no reply is filed by the Respondent-Municipal Corporation.

2. Heard learned counsel for the Applicants and learned counsel for the Respondent-Municipal Corporation.

3. Inviting this Court's attention to the averments in the Civil Application and annextures thereto, learned counsel for the

Applicants submitted that the Applicants are claiming to be exclusive legal heirs of deceased Raishi on the basis of registered Will dated 21.11.2009. The Applicants have fairly disclosed names of widow and other son/daughters of deceased Raishi Chheda in para 3 of the the Application. It is further submitted that on the basis of said registered Will, Applicants are claiming exclusive rights to the subject matter property only. Inviting this Court's attention to an earlier order dated 06.05.2014, passed in another matter (First Appeal No. 1358/2012), it is submitted that the Applicants have applied on the basis of same registered Will in respect of the same property bequeathed to them, but in a different litigation (against a housing society) and this Court had permitted them to be brought on record as Appellants in the place of deceased Raishi Chheda.

4. Learned counsel for the Respondent-Municipal Corporation has opposed this Application inter-alia contending that the delay of 644 days caused in filing this Application has not been properly explained. However, as already noted, no reply is filed till date by the Municipal Corporation. Be that as it may.

5. Perusal of the said Order of this Court dated 06.05.2014 passed in respect of same subject matter property shows that the present Applicants were permitted to be joined as Appellants after the death of deceased Raishi Chheda. It is seen that the Applicants had claimed right on the basis of the same registered Will and considering the case of **Manoj Karam Vs. Ram Tuljiram Shahanani and Ors.** reported in MANU/MH/1585/2013, this Court had

permitted the Applicants to join in the place of deceased Raishi as beneficiaries under the said Will.

6. Perusal of the Application further shows that the Applicants have come with the case that this was an old appeal which was being prosecuted by deceased Raishi Chheda and its papers were not traceable for a considerable time. It is further submitted that brother (Mr. Dhirajlal Raishi Chheda) of Applicant No. 1 had filed several litigations against their father deceased Raishi Chheda and also against the present Applicants and other family members before various Courts in Mumbai. It is submitted that apart from defending the said litigations, the Applicants were also required to look after their old/aged mother and as such, said circumstances have led to delay in filing this Application, which is neither deliberate nor intentional.

7. In the facts and circumstances narrated above, this Court is of the view that sufficient cause is made out and delay is required to be condoned. So far as claim of the Applicants to exclusively represent deceased Raishi Chheda on the basis of the said Will is concerned, liberty can be reserved for the other relatives (widow, other son and daughters of deceased Raishi Chheda) even if, the present Applicants are allowed to be brought on record. In that view of the matter following order is passed :

- (a) The application is allowed in terms of prayer clauses (a),
- (b) and (c). Delay is condoned. The Applicants are

permitted to be joined as Appellants being legal heirs and representative of deceased sole Appellant - Raishi Shivji Chheda.

- (b) Necessary amendment be carried out within a period of 3 weeks from today.
- (c) It is clarified that the other relatives (widow, other son and daughters of deceased Raishi Chheda) are at liberty to move the Court in case of any claim in respect of the the subject matter property, which if made, shall be decided on its own merits.
- (d) Learned counsel for the Applicants volunteers to serve a copy of this order upon said other relatives. He may do so.
- (e) Interim Application is disposed of in the aforesaid terms.

8. All concerned to act on duly authenticated or digitally signed copy of this order.

[M.M.SATHAYE,J.]