

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 18161 OF 2022
IN
FIRST APPEAL NO. 91 OF 1997

Manilal Meghaji Gala and Ors. ...Applicants

In the matter between:

Shri. Meghji Ravji Shah (deceased) ...Appellant

Versus

Shri. John Fransisco Serrao ...Respondent

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Mr. Dishang Shah a/w Hetta Sagar, Archana Jha for the Applicants.
Mr. Nilesh Das for the Respondent.

CORAM : M.M.SATHAYE J.
DATE : 13th DECEMBER 2023

PC. :

1. Heard learned counsel for the Applicants and learned counsel for the Respondent.

2. This is an application for bringing the Applicants on record as legal heirs of sole Appellant Mr. Meghji Ravji Shah, who has expired on 20.07.2014. The Applicants are sons and daughters of the deceased. The wife of the deceased is no more.

3. It is the case of the Applicants that the sole Appellant expired on 20.07.2014 and the Applicants were unaware about the present proceedings. For the first time in the year 2018, upon the receipt of a

letter dated 26.02.2018 from Advocate Mr. Piyush Shah, the Applicants came to know about existence of this litigation. It is submitted that there were certain differences and disputes amongst the present Applicants, who are legal heirs of original Appellant and as such, they could not provide necessary instructions for filing this application. It is submitted that some time in December, 2019, the dispute amongst the legal heirs was resolved and thereafter, they approached the Advocate along with necessary details and death certificate, for filing this application. It is further submitted that from March 2020 till end of February, 2022 due to the effect of Covid-19, the limitation was under suspension due to the order of the Hon'ble Supreme Court and thereafter, the present application is filed as soon as possible thereafter. In these circumstances, there is stated delay of 2224 days in filing this application.

4. Learned counsel for the Respondent strenuously opposed this application. He submitted that the present application is apparently filed through a power of attorney which is executed in April 2018 itself. He submitted that the only explanation for the delay prior to Covid time is dispute between the parties. He submitted that even if there is dispute between the parties, the power of attorney was still there and he could have taken appropriate action. He submitted that the reasons offered are not sufficient to condone the inordinate delay in filing the application.

5. I have carefully considered the submissions. Whether the power of attorney can act on behalf of the parties, who are disputing

amongst themselves, is a question in itself. All the Applicants are senior citizens. Apparently, there is no reason to disbelieve them that since they were not aware of the litigation and since there was dispute going on amongst them, they could not jointly take any action. In any case, the time period from 15.03.2020 to 28.02.2022 has to be excluded from consideration since this limitation-period was under the suspension by the order of the Hon'ble Supreme Court.

6. It is settled position that it is not the extent of delay but the reasons offered therefor are necessary to be considered in the facts of each case. In the aforesaid facts of this case, in the opinion of this Court, the period between December 2019 (when the dispute among the Applicants was resolved) and March 2020, and between March 2022 and August 2022 is sufficiently explained. Therefore, sufficient cause is made out and the delay needs to be condoned.

7. In that view of the matter, this application is allowed in terms of prayer clauses (a) to (c). Delay is condoned. The abatement of the present first appeal vis-a-vis sole Appellant, is set aside. The Applicants are permitted to be brought on record as legal heirs of the sole Appellant. This is subject to condition that the Applicants jointly pay costs of Rs.25,000/- to the Respondent within a period of 4 weeks from today. Only after payment of costs, necessary amendment to be carried out within a period of 2 weeks thereafter.

8. Application is disposed of accordingly. All the parties to act on duly authenticated/digitally signed copy of this order.

[M.M.SATHAYE,J.]