

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1521 OF 2023

Laxman Ganpati Balte

.. Petitioner

Versus

Kamal Vitthal Patil and Ors.

.. Respondents

-
- Mr. Prashant P. Jadhav, Advocate for Petitioner.
 - Ms. Tanvil Tapkire, Advocate for Respondent No.5.
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 14, 2023.

P.C.:

1. Heard Mr. Jadhav, learned Advocate for Petitioner and Ms. Tapkire, learned Advocate for Respondent No.5.

2. Perused the impugned order dated 20.07.2022 passed below Exhibit-238 and Exhibit-240 in RCS No.48 of 2009. The Applications were filed by the Plaintiff for setting aside the abatement of the suit against Defendant No.8 and for condoning the delay for setting aside of the said abatement. It was the contention of the Petitioner / Plaintiff that the fact of death of Defendant No.8 came to his knowledge only during the cross-examination of the other Defendants and in that view of the matter, 8 years has already lapsed at that time.

3. The Application for seeking condonation of delay at Exhibit-242 mentions the reasons for the delay.

4. Mr. Jadhav would submit that the principal suit has been filed only for permanent injunction against the Defendants. Considering that it is not a suit for declaration, in any event, setting aside the abatement in so far as Defendant No.8 is concerned, it should not matter.

5. Record clearly indicates that it was only when the death certificate of Defendant No.8 was exhibited during the evidence i.e. cross-examination at Exhibit-184 in the year 2020, it came to the knowledge of the Petitioner that Defendant No.8 had expired in the year 2013.

6. Ms. Tapkire would submit that the Petitioner had knowledge about the demise of Defendant No.8 as far as back in 2015 and it is incorrect on his part to state that it was brought to his knowledge only in 2020.

7. The impugned order however records to the contrary. The order infact refers to Exhibit-184 read with Exhibit-242 i.e. the Application.

8. The learned Trial Court has stated that the Plaintiff has not explained the delay in so many words as also not mentioned the exact period of delay.

9. Be that as it may, considering the Application below Exhibit-242, I am satisfied with the reasons stated therein and the delay in the facts and circumstances of the present case deserves to be condoned. The impugned order dated 20.07.2022 is harsh and therefore deserves to be quashed and set aside.

10. Hence, the following order:-

- (i) The impugned order dated 20.07.2022 is quashed and set aside subject to payment of costs of Rs.5,000/- by the Petitioner to be paid to the Kirtikar Law Library, High Court within a period of two weeks from today.

11. With the above directions, Writ Petition is disposed.

12. Place the Writ Petition on Board on **28th February, 2023** for compliance.

[MILIND N. JADHAV, J.]

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