

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.1737 OF 2023
IN
SUIT NO.10 OF 2015

Bharti alias Alka Mahendra Vakharia nee Bharti
alias Alka Mangaldas Shah and another ... Applicants / Plaintiffs
Vs.

Rajendrabhai Mangaldas Shah and others... Respondents / Defendants

WITH
TESTAMENTARY SUIT NO.139 OF 2015
IN
TESTAMENTARY PETITION NO.1244 OF 2014
WITH
INTERIM APPLICATION NO.1737 OF 2023
IN
SUIT NO.10 OF 2015
WITH
INTERIM APPLICATION (L) NO.24342 OF 2022
IN
SUIT NO.18 OF 2015

Mr. Tanmay Karmarkar i/b. Mr. Sean Wassoodew for Applicants / Plaintiffs.
Ms. Akansha Saxena i/b. Mr. Sanjay Gawde for Defendant No.1.
Mr. Preet Chheda for Defendant No.2.

CORAM : MANISH PITALE, J.
DATE : SEPTEMBER 21, 2023

P.C. :

INTERIM APPLICATION NO.1737 OF 2023

By this application, the applicants / original plaintiffs seek to bring on record legal representatives of defendant No.4, who expired during the pendency of the suit. The applicants also pray for condonation

of delay of 296 days in moving the present application.

2. Copy of the death certificate shows that defendant No.4 expired on 08.02.2022. It is submitted in paragraph 4 that the applicants could file the present application after delay of 296 days mainly because defendant No.4 expired during the period of lockdown due to Covid-19 and the applicants being senior citizens found it difficult to venture out and contact their advocate to give necessary instructions.

3. This Court finds that sufficient cause is made out for condoning the delay.

4. Exhibit-B is the Schedule in accordance with which the plaintiffs seek to amend the cause title to delete the original defendant No.4 and to array in her place, her legal representatives i.e. defendant Nos.4A to 4C.

5. This Court is satisfied that the aforesaid prayer deserves to be granted. Accordingly, the application is allowed. Delay is condoned and the plaint is permitted to be amended as per the Schedule at exhibit-B. The amendment be carried out within three weeks. Re-verification is dispensed with.

INTERIM APPLICATION (L) NO.24342 OF 2022

At the outset, the learned counsel appearing for the applicant submits that in addition to the prayer clauses (a) and (b), the applicant seeks to add by way of amendment, prayer clause (b1), relatable to the statement made at paragraph 5 in the application. It is stated that during the pendency of the suit, original defendant No.4 expired and legal heirs of the said defendant need to be brought on record. Accordingly, the applicant seeks to add prayer clause (b1). The proposed prayer relates to deleting original defendant No.4 and in her place, adding the names of

the legal heirs i.e. defendant Nos.4A to 4C. In that context, the learned counsel for the applicant prays for permission to add exhibit C-1, giving the schedule pertaining to details of proposed defendant Nos.4A to 4C.

2. In the interest of justice, the aforementioned amendment is allowed so as to add prayer clause (b1) and schedule at exhibit C-1. The amendment be carried out within two weeks from today. Re-verification is dispensed with.

3. This application is filed by original defendant No.6 for being transposed as the plaintiff. She is one of the beneficiaries under the Will of the deceased. The original plaintiffs were the two executors of the Will. This Court is informed that one of the executors died and his name was already deleted from the proceedings. It is further brought to the notice of this Court that subsequently, on 22.06.2020, the remaining plaintiff also died. In that light, original defendant No.6 has already applied for being transposed as the plaintiff. There is no serious objection raised on behalf of the other defendants in respect of the aforesaid prayer made in the present application.

4. But, this Court takes note of the fact that in the present application, apart from seeking transposition of defendant No.6 as the plaintiff, further prayers are made at prayer clauses (e) and (f), seeking certain directions to restrain defendant Nos.1 and 2 from dealing with certain bank accounts. This Court is of the opinion that such prayer clauses in the present application are misplaced and such composite application cannot be considered.

5. At this stage, the learned counsel appearing for the applicant submits that liberty may be reserved for the applicant to move an appropriate application, in order to press reliefs in terms of prayer clauses (e) and (f) in the present application.

6. In view of the above, the present application is partly allowed and the applicant i.e. original defendant No.6 is permitted to be transposed as the plaintiff. In addition, considering the statement made in paragraph 5 of the application, prayer clause (b1) in the application is also allowed and consequently, the applicant is permitted to delete original defendant No.4 and amend the cause title to add defendant Nos.4A to 4C as the legal representatives of the original deceased defendant No.4. The consequential amendments be carried out within two weeks from today.

7. Insofar as the prayer clauses (e) and (f) are concerned, the applicant would be at liberty to move an appropriate application, which shall be decided on its own merits.

8. Interim Application (L) No.24342 of 2022 is disposed of in the above terms.

9. This Court is informed that Interim Application (L) No.24292 of 2022 is filed in Testamentary Suit No.139 of 2014 but it is not on Board today.

10. List the said application for further consideration on 12.10.2023.

(MANISH PITALE, J.)

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