

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 318 OF 2020
IN
SUIT NO. 1266 OF 2018**

Kishore Kumar Maganmal Gajaria

..Applicant/
Original Plaintiff

VS.

Gokaldas Dhamanmal Gajaria
and 13 Ors.

..Respondents

Adv. Shrey Fatterbekar a/w Tushar Awasthe i/b Chandrika
Prajapate for the Applicant/Plaintiff.

Mr. Surish Shetye i/b Mr. Sanjeev Pradhan for the Defendant
No. 1.

Adv. Bhavin Gada i/b Adv, Dushyant Lilani a/w Adv.
Mrityanjay B. for the Defendant No. 14.

CORAM : R.I. CHAGLA, J

DATED : 27 MARCH 2023

P.C. :

1. By this Interim Application, the Applicant/Plaintiff has sought for setting aside the abatement against Defendant No. 10. Further relief is sought for condonation of delay of 228 days in making an application for bringing legal heirs of Defendant No. 10 on record. Defendant No. 10 expired on 27/05/2019. Permission is sought for carrying out the amendment to the Plaint as set out in part A and part B of

the schedule annexed to the Interim Application.

2. Learned counsel appearing for the Applicant/Plaintiff has tendered an Affidavit of Service in compliance with the order dated 06/03/2023 by which the Applicant/Plaintiff was permitted to serve by way of substituted service on Defendant No. 2, legal heirs of Defendant No. 3 i.e. 3A and 3B as well as Defendant Nos. 10A, 10C and 10E. The Affidavit of Service has been taken on record. The substituted service has been carried out and these Defendants have accordingly been served. It is to be noted that in spite of the service, the aforementioned Defendants have not made an appearance in this Court. The remaining Defendants have submitted to the orders of this Court.

3. The Applicant/Plaintiff has given reasons for the delay in filing the present Interim Application on the ground that the Applicant/Plaintiff is a resident of the United Arab Emirates (UAE) and was unaware about the death of Defendant No. 10 for a long time until he was informed about the same by one of the Applicant's relatives. Upon being informed about the demise of Defendant No. 10, the

Applicant found an advertisement published on a community website called "bhatia.buzz" regarding a condolence meeting that is supposed to take place on 30/05/2019 on account of the demise of Defendant No. 10. Thereafter, upon perusal of the advertisement the Applicant learnt that it is necessary to amend the Plaint to bring on record the legal heirs and representatives of the Defendant No. 10. Accordingly, relief is sought for amendment of the plaint by substituting the legal heirs of Defendant No. 10 in place and stead of the original Defendant No. 10.

4. In so far as Defendant No. 7 is concerned, the Applicant has stated that he learnt about the death of the Defendant No. 7 from the condolence meeting which was to be held for the demise of the Defendant No. 7 and published on the website called "bhatia.buzz" that Defendant No. 7 had passed away on 28/11/2019. Exhibit "B" of the Interim Application is the advertisement published on the website called "bhatia.buzz". The condolence meeting was held on 01/12/2019.

5. In so far as the legal heirs of Defendant No. 7 are

concerned, they are parties to the above suit being Defendant Nos. 8 and 9. Thus, relief is sought for the deletion of Defendant No. 7 from the cause title of the plaint and mentioning that the legal heirs and representatives of Defendant No. 7 are Defendant Nos. 8 and 9.

6. The Applicant has referred to a letter dated 12/12/2019 addressed by the Applicant's Advocate to the legal heirs of Defendant No. 10 asking for respective addresses of the remaining legal heirs of Defendant No. 10 for the purpose of adding them as necessary parties in the Suit. This letter has not been responded till date.

7. The Defendant Nos. 1 and 14 submit to the orders of this Court.

8. Having considered the averments in the Interim Application and noting that though the legal heirs of Defendant No. 10 i.e. Defendant Nos. 10A, 10C to 10E, have been served by way of substituted service, they have not made any appearance in this Court, it would be appropriate to set aside the abatement by condoning the delay in filing of the present Interim Application.

9. This upon considering that the Applicant had sought information with regard to addresses of the legal heirs of Defendant No. 10 and which took time in providing the same. Further, the knowledge of the demise of Defendant No. 7 had been only through the community website called “bhatia.buzz” which regarded a condolence meeting for their Defendants. Hence, the following order is passed:

ORDER

- (a) The delay of 228 days in making the application in respect of Defendant No. 10 who expired on 27/05/2019 is condoned.
- (b) The abatement of the Suit is set aside against Defendant Nos. 7 and 10.
- (c) The Applicant is permitted to amend the Plaint as per parts A and B of the schedule annexed to the Interim Application and the amendment shall be carried out within a period of two weeks from the date of this Court.
- (d) Re-verification is dispensed with.
- (e) The Applicant/Plaintiff upon carrying out the

amendment of the Plaint shall simultaneously serve Defendants with the amended Plaint.

(f) Interim Application No. 318 of 2020 is disposed of.

[R.I. CHAGLA J.]