

Sharayu Khot.

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

INTERIM APPLICATION NO. 2735 OF 2022

IN

SUIT NO. 1213 OF 2019

Prakash Tikamdas Bajaj

...Applicant

In the matter of

Biharilal Tikamdas Bajaj & Anr

...Plaintiffs

Versus

Ramesh Tikamdas Bajaj & Anr.

...Defendants

Mrs. Sushma Singh for the Applicant/Plaintiff No. 2.

None for the Defendants.

CORAM : R.I. CHAGLA J

DATE : 28 March 2023

ORDER :

1. By this Interim Application, the Applicant/Plaintiff No. 2 is seeking permission to amend the Suit Plaint and pending Interim Application, Notice of Motion as per schedule annexed to the Interim Application and for the re-verification of the Plaint and Interim Applications to be dispensed with. Further relief is sought for

condonation of delay of over three months in taking out the Interim Application and for setting aside the abatement if any.

2. The Applicant has stated that the Plaintiff No. 1, who is the elder brother of the Applicant/Plaintiff No. 2, had expired on 29th October 2021. Plaintiff No. 1 left behind his last will and testament dated 20th July 2009 appointing the Applicant as the sole executor, in respect of which Probate Petition (L) No. 12370 of 2022 was filed in this Court having Testamentary & Intestate Jurisdiction. Accordingly, the present Interim Application has been taken out for amendment of the Plaint.

3. The Applicant has stated that the delay in filing the Interim Application is due to the Covid 19 pandemic and the time taken for tracing the last will and testament dated 20th July 2009 of the original Plaintiff No. 1. Explanation for the delay is given in paragraphs 4 and 5 of the Interim Application. The Applicant has also relied upon his advanced age and ill health.

4. I have considered the averments in the Interim Application as well as taking note of the fact that the original Plaintiff

No. 1 was the brother of the Applicant/Plaintiff No. 2. The original Plaintiff No. 1 in his last will and testament dated 20th July 2009 appointed the Applicant/Plaintiff No. 2 as sole executor and in respect of which Probate Petition is filed and pending in this Court having Testamentary and Intestate Jurisdiction. Further, I am satisfied with the reasons for the delay mentioned in paragraphs 4 and 5 of the Interim Application. Accordingly, the relief sought for in the Interim Application is granted. Hence, the following order is passed. :-

- (i) Delay in filing the Interim Application is condoned.
- (ii) In view of the Interim Application being filed beyond the statutory period of three months from the knowledge of the demise of the Plaintiff No. 1, the abatement of the Suit is set aside.
- (iii) The Applicant/Plaintiff No. 2 is permitted to amend the Plaint and all pending Interim Applications, Notices of Motion in accordance with the schedule annexed to the present Interim Application.

(iv) Amendment shall be carried out by the Applicant/Plaintiff No. 2 within a period of three weeks from the date of this order.

(v) Re-verification is dispensed with.

(vi) Interim Application is disposed of accordingly.

[R.I. CHAGLA J.]