



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10139 OF 2015

Sunderlal Pannalal Barwal Gpa Trushant Sunderlal Barwal
VERSUS
Babulal Pannalal Barwal Lrs Kapoorchand And Others

Ms. M. V. Narwade, Advocate for the petitioner
Mr. A. D. Kasliwal, Advocate for respondent no.1-B
Mr. A. R. Lukhe, Advocate for respondent no.7A and 7B.

CORAM : R. M. JOSHI, J.

DATE : 12th NOVEMBER, 2024

PER COURT :-

1. This petition takes exception to the order dated 04/04/2015 whereby an application filed below Exhibit 59/D for setting aside abatement came to be rejected by the Trial Court on the ground that the same is filed beyond the period of limitation.

2. There is no dispute about the fact that R.C.S. No. 575/2005 came to be filed by the petitioner against respondent and others for partition, separate possession and injunction in respect of the suit properties. Further there is no dispute about the fact that the parties are the coparceners and members of joint family.

3. During the pendency of the suit defendant no.1A and

defendant no.2 died. Petitioner/plaintiff no.1 did not take steps to bring LR's of the deceased defendant in time. This has resulted into the abatement of the suit against them. An application was moved on 16/07/2012 for setting aside the abatement and to bring LR's of defendant no.1A and 2 on record.

4. The learned Trial Court rejected the application only on the ground that the application filed belatedly.

5. Learned counsel for the petitioner submits that the delay caused in the filing of the application cannot become a sole ground for rejection thereof and more particularly when the suit is for partition. Learned counsel for the respondents opposed the petition.

6. Since, admittedly, the suit filed before the Trial Court is for partition, all coparceners are necessary parties and in absence of any one of them the suit would not be tenable. Only this reason was sufficient for the learned Trial Court to condone the delay in filing of the application for setting aside abatement. The learned Trial Court thus has committed error in not considering the said position of law and on more technicality delay application for setting aside abatement and to bring LR's of deceased defendants on record came to be rejected.

7. The order passed by the learned Trial Court since not in consonance with law is not tenable. The interest of justice requires that the delay is condoned in filing application for setting aside abatement. Accordingly petition deserves to be allowed.

8. Impugned order is set aside. Application Exhibit 59/D stands allowed. The petitioner/plaintiff is permitted to carry out amendment within a week from the next of hearing before the Trial Court.

9. Having regard to the fact that the suit is pending since, 2005, the same be decided expeditiously and in any case within a period of six months from today.

(R. M. JOSHI, J.)

ssp