



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13268 OF 2023

ARJUN VITTHAL DETHE AND ANOTHER

VERSUS

ANJANABAI DHANWATE DECEASED THR LRS TARABAI KUDALE
DECEASED THR LRS VIJAYA LAXMANRAO DHASAL AND OTHER

WITH

WRIT PETITION NO. 13269 OF 2023

ARJUN VITTHAL DETHE AND ANOTHER

VERSUS

ANJANABAI NIVRUTTI DHANWATE THR LRS TARABAI KUDALE DIED THR
LRS VIJAYA LAXMANRAO DHASAL AND ANOTHER

Mr. , Advocate for the petitioners

Mr. S. S. Chapalgaonkar, Advocate for respondent Nos.1-A to 1-G, 2-A,
2-B, 2-B-1 to 2-B-3 and 2-C.

CORAM : R. M. JOSHI, J.

DATE : 24th JULY, 2024

PER COURT :-

1. Both sides are heard finally at the stage of admission.
2. Petitioners/original plaintiffs are aggrieved by rejection of application Exhibits 67 and 90 filed for setting aside abatement and to bring LR's of deceased to defendant on record.
3. Plaintiffs filed suit for specific performance of the contract on the basis of agreement executed in the year 2011. During the pendency of suit, sole defendant died. Application Exhibit 67 is filed contending that defendant No.3 died on 01/10/2014. It is vaguely stated that

recently this fact came to the knowledge of the plaintiffs. Hence, application is filed on 16/11/2017 to bring LR's of deceased No.3 on record. Objection was raised by the LR's of the deceased No.3 on the ground that the application has not been filed within time and there is no condonation of delay sought this application deserves to be rejected. After November, 2017 application came to be filed on 18/02/2022 seeking condonation delay to bring LR's of deceased defendant No.3 on record. This application is also opposed by the proposed defendant.

4. Learned Trial Court rejected the application Exhibit 90 by following order,

"Perused Application and say. Heard. The plaintiffs are aware about the death of defendant No.3. Reasons are not justified. Hence application is hereby rejected."

5. Similarly, application Exhibit 67 came to be dismissed with this order.

"Perused Application and say filed. In view of order passed below Exhibit-90 application is hereby rejected."

6. Learned counsel for the petitioners/plaintiffs submits that having regard to the nature of suit and considering the fact that two legal representatives of original defendant were already on record, it is a fit case wherein the application ought to have been allowed.

7. Learned counsel for the defendants opposed the said submission by contending that application filed by the plaintiff is at

belated stage the which indicate that he was not interested in seeking specific performance of the contract. It is his submission that this also reflects on the intention of the plaintiff of his readiness and willingness to performance his part of the contract. Apart from this argument that this application is vague and file at belated stage the same is rightly rejected by the Trial Court.

8. There is no dispute about the fact that original defendant is the vendor who has allegedly executed the agreement to sale in favour of the plaintiff. On her death her LR's are already on record. Thus, it is not the case wherein the interest of LR's of deceased defendant No.3 in suit property was not represented.

9. No doubt the plaintiff ought to have been vigilant and would have filed application to bring LR's of deceased defendant No.3 on record within the limitation and in any case within the reasonable time thereafter. It is the contention of the plaintiff that the original defendant was residing nearby to his place and as such there is substance in the contention of the learned counsel for the defendant that the factum of death of defendant No.3 was within his knowledge.

10. In any case not bringing the LR's of deceased defendant No.3 on record would not help the other defendants in any manner whatsoever. In the facts and circumstances of the case the application for

condonation of delay and to bring LR's of deceased defendant No.3 on record ought to have been allowed by the Trial Court. The order passed by the Trial Court is unreasoned, hence not sustainable. Instead of relegating matter back to the Trial Court for decision afresh on application Exhibits 67 and 90, this Court in the facts of the case finds it appropriate to allow the applications in order to save time as the suit is pending since year 2011.

11. Hence, Writ Petition No. 13268/2023 is allowed. Exhibit 67 and 90 stand allowed subject to cost of Rs.10,000/- to be paid by plaintiff to LR's of defendant No.3.

12. In view of the observations made by this Court in Writ Petition No. 13268/2023, this Court finds no reason or justification not to allow Writ Petition No. 13269/2023. Hence, petition is allowed. Application Exhibits 71 and 88 filed before Trial Court stand allowed.

13. Needless to say that it is open for the defendant to raise the issue about consequence of not bringing LR's of deceased defendant on record in time would reflect on plaintiff's willingness and readiness to perform his part of contract.

(R. M. JOSHI, J.)

ssp