



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

909 WRIT PETITION NO. 12753 OF 2022

Shalubai Govindrao DojodePetitioner

VERSUS

Pradip Vasantrao Dojode & othersRespondents

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Mr. G. R. Syed, Advocate for the Petitioner

CORAM : R. M. JOSHI, J.

DATE :28th JUNE, 2024.

PER COURT :

1. Heard.
2. Though Respondents are served, absent. This indicates that they are not inclined to oppose this Petition.
3. Petitioner is original Plaintiff in Regular Civil Suit No. 32/2010 which came to be dismissed by judgment and decree dated 25.08.2011. During the pendency of the suit, Defendant No. 19 died however, his legal heirs were not brought on record. Against dismissal of the said suit, Regular Civil Appeal No. 28/2011 was filed. In the said appeal, an application was moved under Order 1

rule 8 of Code of Civil Procedure to join the legal heirs of deceased Defendant No. 19 as Respondents in the appeal. The said application was rejected. This has led the Petitioner to file Writ Petition bearing No. 1641/2017. This Court, by order dated 07.02.2020, permitted the Petitioner to withdraw said Petition and to file appropriate application under Order 22 rule 4 of Code of Civil Procedure before the First Appellate Court.

4. Accordingly, application Exhibit 92 is filed before the First Appellate Court. It is contended therein that since in the suit, Defendant No. 19 was joined as Defendant on his own application, the Plaintiff was advised not to take steps for joining legal heirs of deceased Defendant No. 19. On that wrong advise, no steps were taken during the pendency of the suit. It is contended that Petitioner is a old woman and hails from Mysore, Karnataka. On these grounds, application is sought to be allowed with condonation of delay.

5. Learned counsel for Petitioner submits that the First Appellate Court has committed error in ignoring the liberty granted by this Court in Writ Petition No. 1641/2017 for filing application

under Order 22 Rule 4 of Code of Civil Procedure. It is his contention that the application is not rejected on merit but the same is rejected only for the reason that the previous application filed under Order 1 Rule 8 of Code of Civil Procedure was rejected.

6. This Court finds substance in the contention of learned counsel for the Petitioner. Perusal of the impugned order passed below Exhibit 92 in Regular Civil Appeal No. 28/2011 shows that the learned First Appellate court has ignored the order passed by this Court on 07.02.2020 in Writ Petition No. 1641/2017. Once this court has granted liberty to Petitioner to prefer application under Order 22 Rule 4 of Code of Civil Procedure, it would be incumbent on the part of the Appellate Court to decide the said application on merit and not to reject the same by holding that previous application with similar prayers was rejected. Further, the order does not indicate that the contention of Petitioner on merit being considered while deciding the said application. Consideration for rejection of the application is that appeal is pending for more than 10 years. This cannot become a ground to reject the application.

7. In view of the fact that the Petitioner is old lady and Regular Civil Appeal No. 28/2011 is pending before the First Appellate Court since 2011, this Court does not wish to relegate application Exhibit 92 to the First Appellate Court for decision afresh. Instead, considering the application Exhibit 92 and in view of the fact that Respondents have not objected to this Petition, this Court is inclined to allow application Exhibit 92.

8. As a result, this Petition stands allowed. Impugned order is set aside. Application Exhibit 92 is allowed. Amendment be carried out within a period of two weeks from today, before the First Appellate Court. Appeal to proceeding in accordance with law. Petition stands disposed of in above terms.

(R. M. JOSHI)
Judge

dyb