



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Review Application No. 15 Of 2024

In

Writ Petition No. 14730 Of 2023

Vijaykumar Bhaurao Wadkar
Since Deceased Through His L.Rs.

1. Aarti Vijaykumar Wadkar
 2. Sagar Vijaykumar Wadkar
 3. Vikas Vijaykumar Wadkar
 4. Suresh Vijaykumar Wadkar
- ...Applicants

VERSUS

Bapurao Dnyanoba Dudile

...Respondent

...

Advocate for Applicants : Mr. Natu Sharad V.

Advocate for Respondent : Mr. V.D. Gunale

...

CORAM : SHAILESH P. BRAHME, J.

DATE : 15th MARCH 2024

PER COURT :

1. Heard both the sides finally.

2. The applicants are seeking review of order dated 04.12.2023, dismissing writ petition. Learned Counsel for the applicants submits that ground no.3(A) and 3(C) are good grounds to allow their application. While deciding writ petition, this Court failed to deal with submission of violation of principles of natural justice. He would point out that when sole

defendant had died, there was no point in passing order of other side to Say below Exhibit – 52 and 53. He would rely upon Roznama to indicate that for near about six dates, there was no response to order of other side to Say. He would further submit that it is the gross error of trial Court to record that there was delay of ten days only.

3. Learned Counsel for the respondent seeks to rely on affidavit-in-reply. He would submit that there is no manifest error much-less any miscarriage of justice in passing order under review. He would submit that his application (Exhibit-52) for condonation of delay refers to delay of ten months. No fault can be attributed to him if learned trial Judge records it to be ten days. It would be typographical mistake. He would refer to proceeding of Regular Civil Suit No.346/2019 which was filed by the applicant's father, wherein the applicants have been brought on record as heirs.

4. It is further submitted that the parties are unanimous so as to legal heirs of deceased Vijaykumar Bhaurao Wadkar. He would further submit that there is no point in remitting the matter to the trial Court when there is due explanation for delay in bringing heirs on record and the matter in the trial Court would proceed on merits.

5. Learned Counsel for the applicants has shown Roznama

of the suit to show that for more than five dates after order dated 18.11.2022, matter was simply adjourned and there was no response to order of other side to Say. This was obviously for the reason that sole defendant had died. In such case, notices should have been issued to the proposed legal heirs and thereafter trial Judge should have dealt with applications, Exhibit -52 and 53. Learned Counsel for the applicants is right in submitting that there is violation of principles of natural justice and order dated 19.04.2023 is unsustainable.

6. Applicants' father Vijaykumar Bhaurao Wadkar died on 17.10.2021. Applications at Exhibit – 52 and 53 were filed on 18.11.2022. There is delay of about ten months in bringing heirs on record. Application (Exhibit-52) submitted by the respondent, also refers to delay of ten months which is to be condoned. It is apparent mistake of the trial Judge to record that the delay is of ten days in order dated 19.04.2023. Learned Counsel for the applicants is right in submitting that this aspect also has not been expressly dealt with in the order sought to be reviewed.

7. Learned Counsel Mr. S.V. Natu prays to remit the matter to decide applications Exhibit – 52 and 53 afresh. It would be prejudging the applications if they are decided in High Court. Under normal circumstances, I would have accepted the

request of remand. However, I am of the considered view that it would be hyper technical approach to remand the matter for deciding applications (Exhibit – 52 and 53) afresh. Both the parties are unanimous that the present applicants are the only legal heirs of deceased Vijaykumar Bhaurao Wadkar. It is nobody's case that there are other legal heirs which are remained to be brought on record or the heirs which are before this Court, are not the legal heirs.

8. The proceeding of RCS No. 423/2018 are pending at the stage of bringing heirs on record. The trial has not been commenced. The applicants have been brought on record in RCS No.346/2019.

9. For the purpose of considering delay in bringing heirs on record, there is no need to remit the matter to the trial Court. There are no mala fides on part of applicants in causing delay. Substantial rights of parties have been involved in suit which are needed to be addressed on merit. Ends of justice would be subserved in allowing applications Exhibit – 52 and 53, but subject to cost. Under peculiar facts and circumstances, I pass following order :

ORDER

(i) Review Application is allowed.

(ii) Writ Petition No.14730/2023 is disposed of, confirming the order dated 19.04.2023 with modification that legal heirs of the deceased/defendant shall be brought on record within four weeks from today subject to payment of cost of Rs.5000/- by the respondents to the applicants.

**SHAILESH P. BRAHME
JUDGE**

Najeeb...