

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3191 OF 2023

Smt. Meenaben Bavabhai Patel

.. Petitioner

Versus

Pramod Kerichand Shah and Ors.

.. Respondents

-
- Ms. Deepali Kamble, Advocate for Petitioner.
 - Mr. Manoj M. Sabale i/by Shantanu Thorat, Advocacy for Respondent No.4.
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 28, 2024.

P.C.:

1. Heard Ms. Kamble, learned Advocate for Petitioner and Mr. Sabale, learned Advocate for Respondent No.4.

2. Writ Petition takes exception to the order passed below Exhibit “85” in Special Civil Suit No.34 of 2017 by the learned Trial Court dated 25.01.2023 which is at page No.35 of the Writ Petition.

3. The above Application is filed for bringing the legal heirs of Defendant No.1 on record under Order XXII Rule 3 read with Section 151 of the Code of Civil Procedure, 1908 (for short “**CPC**”). Names and details of the legal heirs of deceased Defendant No.1 are stated in Application and it is also averred that despite several efforts, inquiries and due diligence, the details which have been procured are stated

therein.

4. The learned Trial Court while considering the Application has proceeded on the basis that since the death of Defendant No.1 is not stated and reason for condonation of delay is not stated in the said Application, it has been rejected. In so far as the reason for condonation of delay is concerned, the same is explicit in the Application itself when the Applicant i.e. Plaintiff states that he has made inquiries and made all efforts and only thereafter got the details which are stated in the Application.

5. Defendant No.4 represented by Mr. Sabale, in his usual fairness would inform the Court that Defendant No.4 got knowledge about the demise of Defendant No.1 and therefore filed a pursis before the learned Trial Court. In the given facts of the present case, the aforesaid information was therefore good enough for the learned Trial Court to allow the Application filed below Exhibit “85”.

6. In view of the above, order dated 25.01.2023 stands quashed and set aside. Application for condonation of delay to bring on record the legal heirs of deceased Defendant No.1 filed below Exhibit “85” stands allowed. The learned Trial Court shall permit the Plaintiff to carry out the amendment within a period of two weeks in accordance with law and thereafter proceed with the Suit proceedings.

7. In the interest of justice and more specifically when the Application is also filed under Section 151 of the CPC, it is directed that abatement, if any, in view of the delay in filing the Application on behalf of the Plaintiff shall stand set aside.

8. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE

Digitally signed by
AJAY TRAMBAK
UGALMUGALE
Date: 2024.02.28
18:34:30 +0530