

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

CIVIL REVISION APPLICATION NO. 507 OF 2019

Shah Vijpar Samant (Deceased) Thru. Lrs
Maniben Vijpar Nishar @ Shah (Deceased)
LRs. Ramesh Vijpar Nishar and Ors. ...Applicants

Versus

Huzefa Shoeb Contractor and Anr. ...Respondents

Mr. Neel Gala a/w Pritesh Parmar i/b R.M. Haridas for the Applicant.
Ms. Jayshree Thakkar for the Respondents.

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CORAM : M.M.SATHAYE, J.
DATE : 16th FEBRUARY 2024

PC. :

1. Heard learned counsel for the parties. Taken up for disposal by consent. Perused record.

2. The Petitioners being legal heirs of original Defendant have filed this Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908 challenging the Judgment and Order dated 27.03.2019 passed by the Appellate Bench of Small Causes Court at Bombay in Misc. Appeal No. 330 of 2016 arising out of an order dated 06.04.2016 passed by the Court of Small Causes, below Exh.9 in R.A.E. Suit No. 131/187 of 2014. By the said impugned Order, the Respondents / Plaintiffs have been permitted to continue the said suit and bring the Petitioners on record thereof as legal heirs and representatives of the sole Defendant.

3. Heard learned counsel for the parties. Perused the record. Few facts shorn of unnecessary details, for disposal of this matter, are as under.

4. The Respondents have filed aforesaid suit against original Defendant Shah Vijpar Samant for recovery of possession of suit property bearing Shop No. 11, Ground Floor, Adam Nahal, situated at Tardeo Road, Mumbai – 400 034. Summons was issued in the said suit, which could not be served and therefore, the same was pasted on 15.09.2014. Thereafter, advocate for the Plaintiff received a letter dated 30.09.2014 from another Advocate informing death of the sole Defendant on 22.09.2009 and details about the legal heirs and representatives i.e. present Petitioners were furnished. The plaintiffs thereafter filed application below Exh.9 seeking condonation of delay and bringing the Petitioners on record. This application Exh. 9 was heard by the learned Trial Judge and after hearing both sides, by order dated 06.04.2016, rejected the same on the ground that the plaintiffs have applied belatedly for bringing the legal heirs of sole Defendant on record. The learned Trial Judge found that it cannot be said that the Plaintiffs were prosecuted the suit against the dead person in good faith.

5. The Respondents filed aforesaid Misc. Appeal before the Appellate Bench of Small Causes Court challenging the aforesaid order dated 06.04.2016. The Appellate Court, by the impugned order, has allowed the Misc. Appeal setting aside the order passed

below Exh.9, allowing the application Exh.9 thereby permitting the plaintiffs to bring Petitioners on record as legal heirs and representatives of the deceased Defendant and also permitting the necessary amendment. It is in these circumstances that the Petitioners are before this Court.

6. At the outset, learned counsel for the Respondents/Plaintiffs has submitted that amendment is already carried out and the present Petitioners are already brought on record as legal heirs of sole Defendant.

7. The learned counsel for the Petitioners submitted that the impugned order is not justified inasmuch as there was no reason for condonation of delay in bringing their names on record and there was also no good reason to interfere with the order of the Trial Court who had rejected the application below Exh.9. He submitted that the observations in paragraphs 8 and 9 of the impugned order holding that the Petitioners (being legal heirs of original defendant) kept mum since the death of the defendant i.e. since February 2009 upto September 2014 and thus played deliberate mischief or fraud on the Plaintiffs, are completely unwarranted in the facts of the case. He submitted that the suit itself is filed in 2014 and as such there is no question of keeping mum since February 2009 till filing of the suit. He submitted that in fact if the dates are properly appreciated, it can be seen that within 15 days from the date of pasting of summons, the Advocate's letter has been issued by them informing the death of sole Defendant and giving necessary details. He submits

that therefore, no ill intention could have been attributed to the Petitioners and certainly not that of fraud in any case.

8. Learned counsel for the Respondents has supported the impugned order, but has fairly accepted that observations about the alleged conduct of the Petitioners and commission of fraud or deliberate mischief was not warranted in the facts of the case. She submits that lower Appellate Court have exercised jurisdiction under Order 1 Rule 10 of Code of Civil Procedure, 1908 which enables the Court to add any person as a party at any stage of the proceedings and in facts of the present case, the Appellate Court has found that there was sufficient reason for condonation of delay and therefore, the Respondents have been permitted to bring Petitioners on record. She further submitted that there is nothing perverse in the impugned order and no error apparent on the face of the record can be found. She, therefore, prayed for rejection of the revision application.

9. I have carefully considered the submissions. Perusal of the impugned Order shows that the reasons by which application Exh.9 is allowed, are far from being perverse. In fact, the Appellate Court has correctly found that after getting knowledge of the death of the original defendant on receipt of the letter dated 30.09.2014, the Plaintiffs have filed the application. The reason given for delay by the Respondents/Plaintiffs has been accepted by the Appellate Court holding that in the facts of this case, the Court cannot push the Plaintiffs to file a fresh suit. There is no error apparent on the face of the record in the exercise of the power by the lower Appellate Court

under order 1 Rule 10 of the Code of Civil Procedure,1908. The impugned order only means that the parties will face each other on merits in the trial in which all contentions will be decided. In light thereof, I find no reason to interfere in the impugned Order. Accordingly the revision application is rejected.

10. However, it is clarified that the observations in the impugned order about conduct of the Petitioners in respect of informing death of the original Defendant and observations about so called deliberate mischief or fraud, shall not prejudice the Petitioners during the Trial of the suit.

11. Civil Revision Application is accordingly disposed of in above terms. No order as to costs.

[M.M. SATHAYE,J.]