

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7438 OF 2017

~~Pranjeewan D. Rawal~~

(since deceased) through his Legal Heirs and
Representatives

Jignesh Pranjeewan Rawal & Ors.

.. Petitioners

Versus

~~Kanwar Ajitsingh Deol~~

(since deceased) through his Legal Heirs and
Representatives

Usha Ajitsingh Deol & Ors.

.. Respondents

.....

- Mr. Chintamani K. Bhangoji for Petitioners

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 5, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 05.03.2024. Heard Mr. Bhangoji, learned Advocate for Petitioners.
3. Present Writ Petition takes exception to the order dated 11.07.2016 passed by the learned Trial Court in Application below Exh. 31 filed by Plaintiffs under O. VI, Rule 17 of the CPC. This Writ Petition is filed in the year 2017. It is mentioned before me today. Application below Exh. 18 for bringing legal heirs of deceased Defendant No. 2 on record was filed. Same is at Exh. B, page Nos. 18-20 of the Writ Petition. Learned Trial Court had issued notice to the

proposed legal heirs which is a handwritten order passed by the learned Trial Court on that Application itself. However, by impugned order dated 11.07.2016, said Application stands rejected on three grounds:- first no reason has been accorded for the delay of approximately four months in filing the Application, secondly the Suit was abated against Defendant No. 2 and thirdly there is no prayer made in the Application for bringing the legal heirs of Defendant No.2 on record and for setting aside abatement. The only reason given by Plaintiff for delay appears in unnumbered paragraph No. 1 of the Application and that is immediately after Plaintiff became aware of demise of Defendant No. 2, Plaintiff approached the Municipal Corporation for obtaining a certified copy of the death certificate of Defendant No. 2 and immediately thereafter filed the Application. That reason ought to have been considered by the learned Trial Court. It is true that there is no prayer for setting aside of abatement of the Suit which stood abated as legal heirs of deceased Defendant No. 2 were not brought on record, but learned Trial Court ought to have been liberal in its approach considering the nature of the Suit proceedings. By not bringing the legal heirs of Defendant No. 2 on record, the Plaintiff's suit would otherwise stand dismissed against original Defendant No. 2 and it would be detrimental to the Plaintiff's interest. Be that as it may, the abatement of the Suit as against

Defendant No. 2 stands quashed and set aside. The Application filed below Exh. 31 stands allowed. Resultantly order dated 11.07.2016 is quashed and set aside subject to Petitioners Plaintiffs paying costs of Rs. 5000/- to the Kirtikar Law Library, High Court, Mumbai within a period of two weeks from today. Copy of the receipt of payment of costs shall be placed before the learned Trial Court. Plaintiffs shall be permitted to amend the Suit proceedings in accordance with law.

4. Learned Trial Court is requested by this Court to dispose of R.C.S. No. 5 of 2001 as expeditiously as possible and in any event within a period of 12 months from today strictly in accordance with law. Trial Court shall not give any adjournments unless it is utmost necessary and only if there is an emergency. All contentions of the parties are expressly kept open.

5. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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