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

WRIT PETITION NO. 21 OF 2018

Murlidhar Motiram Jagtap and Ors.	.. Petitioners
Versus	
Ramdas Motiram Barde and Ors.	.. Respondents

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- Mr. Rahul D. Motkari, Advocate for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 19, 2024.

P.C.:

- 1.** Heard Mr. Motkari, learned Advocate for Petitioners.
- 2.** The present Writ Petition impugns and takes exception to the order dated 22.09.2017 passed in Application below Exhibit “26” in Regular Civil Suit No.77 of 2016 by the learned Trial Court. Application was filed by Plaintiffs for deletion and adding the names of Defendant Nos.7A to 7E who are the legal heirs of Defendant No.7 namely Indubai Pandit in the Suit proceedings. The said Application stands rejected by the Trial Court on the ground that Plaintiffs were fully aware at the time of institution of the Suit on 30.08.2016 that Defendant No.7 Indubai Pandit had expired much before filing of the said Suit.

3. The learned Trial Court holds that the fact of demise of Defendant No.7 was to the knowledge of the Plaintiffs since one parallel Suit namely Regular Civil Suit No.53 of 2015 wherein Smt. Indubai Pandit was one of the Plaintiffs had been compromised on 12.04.2016. The Trial Court holds that in that compromise which was effected on behalf of deceased Indubai Pandit, her legal heirs were brought on record and they were the persons who had effected the compromise on her behalf which was to the knowledge of the present Plaintiffs.

4. In that view of the matter, the Trial Court holds that they ought to have impleaded her legal heirs at the time of institution of the Suit proceedings, but failed to do so. The Trial Court further holds that no reason has been stated for bringing the legal heirs on record. This finding is erroneous as once the Plaintiffs realized that for effective maintainability of the Suit proceedings filed on 30.08.2016, legal heirs of the deceased would have to be substituted in place of the deceased Indubai Pandit. Another reason given by the learned Trial Court is that no written or oral submissions were made for condoning the delay. Here the question of condonation of delay would not arise as it is an admitted fact that Indubai Pandit had predeceased the filing of the Suit by the Plaintiffs in the Trial Court. Finally, the learned Trial Court holds that the death certificate of Indubai Pandit was not produced on record and it is settled principle of law that law helps

only the vigilant. In that view of the matter, the Application stood rejected.

5. It is seen that the cross Suits were filed before the Trial Court between the parties. The previous Suit namely Regular Civil Suit No.53 of 2015 came to be compromised by filing a compromise pursis on 12.04.2016. No doubt, the learned Trial Court is right in contending that the Plaintiffs ought to have been vigilant. It is seen that immediately four months down the line, the Plaintiffs have filed the present Suit wherein the Plaintiffs have impleaded deceased Indubai Pandit as one of the Defendants.

6. I have perused the Application filed by the Plaintiffs which is at Exhibit "C" - page No.21 as also the Suit filed and it is clearly seen that there is a clear inadvertent mistake on the part of the Plaintiff which has occurred and which needs to be appropriately rectified in the first instance itself.

7. Mr. Motkari in his usual fairness would submit that the Suit was filed by Plaintiffs on 30.08.2016 and after realizing the above mistake, an Application was filed seeking such substitution and rectification on 04.02.2017. I am inclined to admit and agree with the submissions made by Mr. Motkari, after perusing the Application which is at page No.21 of the Writ Petition. The Plaintiffs' mistake, on realization is sought to be rectified.

8. The impugned order dated 22.09.2017 is therefore not sustainable.

9. Needless to state that allowing the present Writ Petition is not unconditional. Writ Petitioner is directed to pay costs of Rs.5,000/- to the Kalwan Bar Association, Kalwan, which shall be paid by the Petitioners within a period of two weeks from today.

10. Since the Suit is of the year 2016, the learned Trial Court is directed by this Court to determine the Suit as expeditiously as possible and in any event within a period of 1 year from today strictly in accordance with law.

11. All contentions of the parties are expressly kept open.

12. It is clarified that, this Court has not opined on any merits of the matter as also not gone into any facts in the present case.

13. It is clarified that in so far as the Suit proceedings are concerned, the learned Trial Court shall not be influenced by any observations made in this order as they are *prima facie* in nature and shall decide the pending Suit strictly in accordance with law.

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

[MILIND N. JADHAV, J.]

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