

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1439 OF 2023

Tardeo Properties Pvt Ltd

.. Petitioner

Versus

Suvarna Amrut Co-op. Housing Society Ltd &
Ors.

.. Respondents

.....

- Mr. Ranjit A. Thorat, Senior Advocate i/by Mr. Sandeep Sharma for Petitioner
- Mr. Yahya Ghogari a/w Mr. Mustafa Shabbir Shamim i/by Shamim & Company for Respondent No. 1
- Ms. Neeta Tukaram Gaikwad for Respondent Nos. 2(a) to 2(c) & 2(e)

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 1, 2024

P. C.:

1. Heard Mr. Thorat, learned Senior Advocate for Petitioner; Mr. Ghogari, learned Advocate for Respondent No. 1 and Ms. Gaikwad, learned Advocate for Respondent Nos. 2(a) to 2(c) & 2(e).

2. Impugned order dated 08.09.2022 has disposed of Chamber Summons No. 442/2019 partly allowing the Chamber Summons. Plaintiff filed Chamber Summons seeking abatement of suit proceedings against Defendant Nos. 2, 4, 7, 9 and 10 as also for condonation of delay and for amendment of the Suit plaint as per the schedule which is at page Nos. 98-102 of the Writ Petition.

3. Mr. Thorat has drawn my attention to the admitted fact that Defendant Nos. 4, 7, 9 and 10 had admittedly expired prior to the filing of the Suit proceedings itself and therefore the Application filed by Plaintiff is not sustainable and maintainable in law. Next he would submit that in so far as Defendant No. 2 is concerned, he expired during the interregnum after the Suit is filed. Though there was delay of two years in filing Application for impleadment of legal heirs of Defendant No. 2, the said delay has been condoned by the impugned order, but the case of Defendant No. 2 *qua* abatement is coupled with the case of the rest of the Defendants while rejecting the Chamber Summons. Mr. Thorat would submit that in so far as the remaining part of the impugned order is concerned i.e. bringing on record legal heirs of deceased Defendant No. 8, the said order has been correctly passed and has also been complied with.

4. In view of the statement made by Mr. Thorat and duly supported by the learned Advocates appearing for Defendants, it is clear that in so far as setting aside abatement of the suit proceedings *qua* Defendant Nos. 4, 7, 9 and 10 is concerned, the same could not have been allowed considering that they had expired much prior to filing of the Suit proceedings. The only remedy available to the Plaintiff in that case would be to file an appropriate Application under O. I, R. 10 of CPC and seek appropriate substitution of legal heirs of deceased

Defendant Nos. 4, 7, 9 and 10. That leave is granted by this Court to the Plaintiff to take out an appropriate Application as available in law for effecting substitution. Needless to state that in so far as the abatement against heirs of Defendant Nos. 4, 7, 9 and 10 is concerned, the same is expressly set aside with the aforesaid leave and liberty granted by this Court.

5. In so far the deceased Defendant No. 2 is concerned, his heirs are represented before me by Ms. Gaikwad. In order to save time as also the exigency that would be involved in the Suit proceedings since pending since long, delay in amending the names of legal heirs of Defendant No. 2 is condoned. In this view of the matter, that part of the impugned order dated 08.09.2022 as observed in paragraph Nos. 13, 15 and 18 is modified and set aside. Resultantly, Plaintiff is permitted to implead legal heirs of Defendant No. 2 as per schedule of amendment on page Nos. 98-102 of the Writ Petition within a period of four weeks from today.

6. In view of the timeline in the present case, learned Trial Court is requested by this Court to dispose of the Suit proceedings 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.

7. After this order is dictated, I am informed that one of the legal heirs of Defendant No. 2 i.e. Respondent No. 2(d) Vrushali Vilas Sawant has already expired in the interregnum and her legal heirs will have to be therefore impleaded. The names and details of the legal heirs have been given to Mr. Thorat. Learned Trial Court shall allow the Plaintiff to implead the legal heirs of Respondent No. 2(d) without insisting any further Application in order to save time and in the interest of justice.

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

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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AMBERKAR
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