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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION No. 16867 OF 2023

IN

WRIT PETITION NO. 5113 OF 2001

Devishankar Mishra ... Applicant

In the matter between

Devishankar Mishra ... Petitioner

Versus

Chhotelal Bansi Prajapati and Ors. ... Respondents

.....

Mr. Mahesh Mishra for Respondent No.1

.....

CORAM : MILIND N. JADHAV, J.

DATED : 22nd APRIL, 2024

P.C. :-

1. Not on Board. Upon producing Praecipe, the matter is taken on board.
2. Heard Mr. Mahesh Mishra, learned Advocate for Respondent No.1.
3. Interim Application No.16867 of 2023, seeks impleadment of legal heirs of deceased Respondent No.1 on record in Writ Petition No. 5113 of 2001. Mr. Mishra, learned Advocate draws my attention to the fact that the Writ petition has been restored by this Court by Order dated 31st July, 2023 after it remained dismissed for quite sometime since 5th

September, 2019. He would submit that in the interregnum, the decree holder i.e. Respondent No.1 represented by him pursued execution and some orders including warrant of possession has been passed against the Judgment Debtor. However, since Respondent No.1 expired in the interregnum, his legal heirs are required to be brought on record. Hence, interim application is filed. It is submitted that Respondent No.1 expired on 14th August, 2021. The Application for bringing the legal heirs on record is filed as also for setting aside abatement if any. There is delay of approximately 20 months after giving the benefit of limitation during the Covid-19 pandemic period upto 28th February, 2022 as per the Supreme Court Order passed in Suo-moto Petition No. 3 of 2020. He would submit that this Court be pleased to set aside the abatement, if any.

4. I have perused the application. The Application deserves to be allowed for the reasons stated therein. Therefore, interim application stands allowed in the facts of the present case. The names of the legal heirs of the deceased Respondent No.1 are stated in paragraph No. 3 of the interim application.

5. The interim application stands allowed in terms of prayer clauses (a), (b) (c) and (d) as prayed for. The delay of 20 months stands

condoned and abatement, if any, stands set aside.

6. Amendment is permitted to be carried out by the Advocate for the Respondent No.1 and now the newly added Respondents within a period of two weeks from today to expedite the hearing of the Petition which is filed in the year 2001.

7. The Registry shall permit the Advocate for the deceased Respondent No.1 and the newly added Respondents to carry out the amendment. Re-verification is dispensed with. After the amendment is carried out, copy of the amended cause title shall be served on the Advocate for the Petitioner. Accordingly change will be affected by the Advocate for the Petitioner in the copy of the Petition.

8. In view of the fact that the Writ Petition is of the year 2001, list the Petition on board on 12th June, 2024 at 10.30 a.m.

9. Interim Application No. 16867 of 2023 is allowed and disposed.

(MILIND N. JADHAV, J.)