



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 14530 OF 2024

1. Jay Shivray Prathishtan

A registered public charitable trust,
Having its office at – Panchavti Apartments,
Lane No. 1, Parmanhs Nagar, Krishna Colony,
Paud Road, Kothrud Pune – 411 038.
Through its Secretary

2. Mr. Avinash Laxman Balkawade

Age : 30 years, Occ. : Business
Residing at – As above

...Petitioners

Vs.

1. Dnyanoba Narayan Parkhi

(Deceased)
Through his legal heirs

a) Smt. Vimal Dnyanoba Parkhi

b) Sau. Pallavi Bajrang Chinchwade

c) Sau. Sandhya Vipul Kale

d) Sau. Sarika Bajrang Gole

e) Sau. Sushma Santosh Matere

f) Sau. Reshma Sudhir Balkawade

g) Sau. Sulbha Hemant Valhekar

h) Sau. Pratibha Navnath Kale

2) Mr. Ganesh Dnyanoba Parkhi

...Respondents

Mr. Purushottam G. Chavan	Advocate for the Petitioners
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CORAM : S. M. MODAK, J.

DATE : 23rd OCTOBER 2024**JUDGMENT :-**

1. Heard learned Advocate Shri Chavan for Original Plaintiff-Petitioners. There are two defendants. Suit is filed in the year 2015. It is for declaration of the permanent injunction. During pendency of the suit, defendant No. 1-Dnyanoba has expired on 06.10.2016. His son is defendant no. 2. Both were represented by an advocate and they have also filed written statement.

2. In spite of this learned Advocate representing Defendant No. 1 has not informed to the Court about the death. The provisions of the Order 22 Rule 10 (A) of the Civil Procedure Code were not fulfilled. The Plaintiffs got knowledge about death of the Defendant No. 1, when they received suit summons in regular Civil Suit No. 378 of 2022. It was filed by the present Defendant No. 2 and other legal representatives of deceased Defendant No. 1-Dnyanoba by treating it

as knowledge of the death. He moved an application for bringing the legal representatives of deceased-Defendant No. 1 on record. Admittedly, there was no prayer for setting aside the abatement and condonation of delay caused in moving that application. The trial Court as per order dated 19.03.2024 has disallowed the said application on technical ground that is to say there is no prayer for setting aside the abatement and condonation of delay.

3. Learned Advocate Mr. Chavan tried to contend that the suit will not abate because one of the legal representatives of the deceased defendant no. 1 is already on record. He relied upon the observation in case of *Subhash s/o Shriram Dhonde Vs. State of Maharashtra and Anr.*¹. The ratio is on different facts. The issue was whether the appeal will abate if some of the legal representatives are already on record. It does not. But the issue in this petition is whether proper prayers were made/were not made before the trial Court.

4. It is true that as per Article 120 of the Limitation act the period for bringing legal representatives on record is 90 days from the date of the death of the concerned Parties and not from the date of knowledge

1 1995 Supp (3) SCC 332

of death.

5. In fact proper course of action for the Plaintiff was to plead all these facts. In facts it is there. But proper prayers for setting aside the abatement and the condonation of delay were not made.. Unfortunately, it has not been done. Ultimately Plaintiffs depends upon legal advice. Even trial court has not considered the failure of duty by learned Advocate for deceased Defendant No. 1. Plaintiff has failed in seeking proper prayers and even trial Court has failed in appreciation in facts. As this is only issue involved in this writ petition. I am inclined to grant a liberty to the Petitioners to file such application making all the prayers. Once such application is filed, trial Court can decide it on merits. Hence, following order is passed:-

ORDER

- (i) Writ Petition is allowed.
- (ii) The Order dated 19.03.2024 passed by the Court of 5th Addl. Judge, Small Causes Court and Jt. C.J.S.D., Pune is set aside.
- (iii) The Petitioners are granted liberty to file fresh application making necessary prayers.
- (iv) The Respondents are at liberty to take all the objections

available to them.

- (v) The trial Court to decide that application afresh and dispose it of. This Court has not made any observations on merits.

6. Accordingly, Writ Petition is disposed of

[S. M. MODAK, J.]