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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12763 OF 2023

Ashok Kallappa Lambe

.....Petitioner

Vs.

Shantabai Sadashiv Lambe
and ors

.....Respondents

Mr. Chetan G. Patil a/w Mr. Vishwesh Gadage i/b Mr. Mandar Bagkar Advocate for the Petitioner
Ms. Snehal S. Jadhav AGP for respondent State

CORAM : GAURI GODSE, J.

DATE : 3rd JULY 2025

ORDER:

1. This petition is filed by defendant no. 1 to challenge the order passed by the Trial Court condoning the delay and permitting the plaintiffs to bring on record heirs and legal representatives of deceased plaintiff no. 5. Defendant no. 1 had also filed a review application before the Trial Court which is also dismissed. Hence, this petition.

2. Plaintiff no. 5 expired on 23rd January 2021. Application to bring on record heirs and legal representatives was filed on 4th

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October 2022. The plaintiffs pleaded that after the death of deceased plaintiff no. 5, when the family was mourning the death of plaintiff no. 5, his wife also expired on 1st July 2022. The plaintiffs therefore contended that there was some delay in taking the copy of death certificate and thus, there was delay in filing the application.

3. To this application, defendant no. 5 filed a reply opposing the delay condonation on the ground that the death certificate produced on record was issued on 29th September 2021. However, the application was filed only on 4th October 2022. Hence, according to defendant no. 1, false grounds were raised in the application. Considering the reasons stated in the application, the learned Trial Judge allowed the application and permitted the plaintiffs to bring on record heirs and legal representatives of deceased plaintiff no. 5.

4. Defendant no. 1 filed a review application contending that the objection raised on behalf of defendant no. 1 in pointing out the date of issuance of death certificate was not appreciated by the Trial Court and hence, there was error apparent on the record and thus, there was sufficient ground to recall and review the

order allowing the plaintiffs' application. This application for review is also rejected by the Trial Court.

5. Learned counsel for the petitioner submits that the obvious error on record of the date of issuance of certificate is not even considered by the Trial Judge. He submits that the date of issuance of the certificate falsifies the grounds raised on behalf of the plaintiffs. He, thus, submits that the impugned orders would require interference by this Court.

6. I have carefully perused the application for condonation of delay. In paragraph 2A of the application, the plaintiffs have pleaded about the death of plaintiff no. 5's wife on 1st July 2022. The reasons given in the application are concerning the loss of the family and the mourning period in view of death of plaintiff no. 5 and his wife within a short span of time. The death certificate produced on record is issued on 29th September 2021. However, the date of issuance of death certificate is immaterial and irrelevant to the grounds for condonation of delay raised in the application. The plaintiffs have not relied upon the date of issuance of death certificate as a ground for condonation of delay.

Considering the immediate death of plaintiff no. 5's wife as stated in the application for condonation of delay, the reasons recorded by the learned Judge for allowing the application cannot be faulted. Such applications cannot be decided with a hyper technical approach.

7. Learned counsel for the petitioner relies upon the decision of the Hon'ble Apex Court in the case of *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others*¹. He submits that as the per the legal principles summarized in the said decision, the plaintiffs' conduct, behaviour and attitude which indicates negligence ought to have been considered by the Court for rejecting the application. He submits that as held by the Hon'ble Apex Court, such grounds cannot be considered for condonation of delay.

8. The Hon'ble Apex Court in the said decision held that, there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing an application for condonation of delay, as the courts are not supposed to legalise injustice but are obliged to remove injustice. It is further held by the Apex Court that the term

¹ (2013) 12 Supreme Court Cases 649

"sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact situation.

9. In the facts of the present case, the reasons considered by the Trial Court for allowing the application are in accordance with the legal principles settled by the Hon'ble Apex Court. I see no reason to disbelieve the grounds raised on behalf of the plaintiffs in paragraph 2A of the application as discussed in the preceding paragraphs.

10. This is not a fit case to exercise the discretionary jurisdiction of this Court under Article 227 of the Constitution of India. The petition is devoid of any merit. Hence, the petition is dismissed.

[GAURI GODSE, J.]