IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1998 OF 2016

Sam Exports ...Petitioner

V/s.

Hindustan Oil Mills and Anr. ...Respondents

Mr. Rohan Sathaye *a/w Mr. Rihal Kazi, Mr. Guru Shanmugam, Ms. Zainab Tinwala, Mr. Mayur Pumnani i/b M/s M and M Legal Ventures, for Petitioner.*

Mr. Rashid Khan *with Mr. Aarif Dhariwala i/b Mr. Rakesh Kumar Singh, for Respondent Nos. 2 and 3.*

Mr. Rohan Savant *a/w Ms. Kritika Mundra and Ms. Drisuti Ojha i/b TRD Associates, for proposed Respondent No. 4 and 5.*

CORAM: SANDEEP V. MARNE, J.

DATED: 19 AUGUST 2026

P.C.:

1) By this Petition, Petitioner has challenged order dated 5 February 2014 passed by the learned Judge, City Civil Court, Greater Bombay, dismissing Chamber Summons No. 641 of 2013 and declaring that the suit against Defendant No. 1 shall stand abated.

2) It must be observed at the very outset that under Order XLIII Rule 1, Clause (k) of the Code of Civil Procedure (Code) ordinarily an

appeal lies against an order made under Rule 9 of Order XXII refusing to set aside abatement or dismissal of a suit. Accordingly, the Petitioner had filed Appeal form Order No. 463 of 2014. However, for reasons unknown at this juncture, the Appeal from Order was withdrawn by order dated 12 February 2016 with liberty to file a Writ Petition. Accordingly, the present Writ Petition has been filed. The impugned order has been passed on 5 February 2014 and by now period of 12 long years has passed. The present Petition itself has been pending for the last 10 long years. If at this stage, the Petitioner is driven back to the remedy of filing an AO, the same would result in further delay in the proceedings. It is on this count that this Court proceeds to ignore the availability of remedy of filing a statutory appeal against impugned order and entertain the present Petition filed under Article 227 the Constitution of India.

3) I have heard Mr. Sathaye, the learned counsel appearing for the Petitioner, Mr. Khan, the learned counsel appearing for Respondent No. 2 to 3 and Mr. Savant, the learned counsel appearing for Respondent No. 4 and 5 and have considered the submissions canvassed by them.

4) Defendant No. 1 passed away on 10 June 2010. It is the Petitioner's case that it came to know about the death of Defendant No. 1 in July 2010. Accordingly, the Advocate of the Petitioner sent a letter to the Advocate who represent Defendant No. 1, calling upon him to bring on record the legal heirs of deceased Defendant No. 1 by amending the pleadings. Apparently, there was no response to the letter dated 6 July 2010 from the Advocate of deceased Defendant No. 1. The Petitioner thereafter addressed letter dated 11 October 2011 to the Advocate of

deceased Defendant No. 1, requesting for the names of legal heirs. Again, no response was received. The Petitioner once again wrote to the Advocate of deceased Defendant No. 1 on 10 September 2012, requesting for names of legal heirs and issuing a threat that, if names of legal heirs were not communicated, further steps would be taken on an assumption that there are no legal heirs of Defendant No. 1.

5) Since no response was given to third letter dated 10 September 2012, the Petitioner was compelled to file Chamber Summons No. 1075 of 2012 for appointment of Administrator General in respect of Defendant No. 1, since names of legal heirs were not known. The moment Chamber Summons No. 1075 of 2012 was served on Advocate of Defendant No. 1, an immediate response was received on 5 February 2013 and the Advocate for deceased Defendant No. 1 communicated names of five legal heirs of Defendant No. 1. The Petitioner thereafter filed Chamber Summons 641 of 2013 on 31 March 2013 for bringing on record the legal heirs of deceased Defendant No. 1.

6) Considering the above position, it is difficult to hold that Petitioner was negligent in not taking any steps to bring on record the legal heirs of Defendant No. 1.

7) Much is sought to be said in respect of relationship between partner of the Petitioner and deceased Defendant No. 1. True it is that, in paragraph 2A of the plaint, Plaintiff has admitted that one of the partners of the Plaintiff, Mr. Altaf J Hamid is closely related to the proprietor of Defendant no. 1. Mr. Sawant has highlighted the position

that the partner of the Plaintiff had attended wedding of a legal heir of Defendant No. 1 from one branch (first wife) and an Arangretram program of legal heir of Defendant No. 1 through another wife. However, merely because the partner of the Plaintiff may have the attended social functions of heirs of Defendant No. 1, the same would not *ipso facto* lead to an assumption that he had knowledge of names of all legal heirs of Defendant No. 1. The City Civil Court itself has not recorded any positive finding about knowledge on the part of Plaintiff of names and addresses of all legal heirs of the deceased Defendant No. 1. In my view therefore, the Trial Court has unnecessarily taken into consideration the relationship between the other partner of the Plaintiff and proprietor of Defendant No. 1 for the purpose of recording a finding as if Plaintiff was deliberately not taking any steps for bringing on record legal heirs of Defendant No. 1. On the contrary, there is sufficient material on record to infer that Plaintiff was vigilant in respect of the matter and was repeatedly calling upon the Advocate of Defendant No. 1 for furnishing the names of legal heirs.

8) Reliance by Mr. Savant on judgment of the Apex Court in ***Balvant Sing (Dead) V/s. Jagdish Sing and Ors.***[1], does not cut any ice. The case before the Hon'ble Apex Court involved failure on the part of legal heirs of the Appellant to bring themselves on record within a reasonable time. In the present case, the issue is about bringing legal heirs of opposite party, who has passed away during pendency of the Suit. It is not necessary that in every case, Plaintiff must be aware of names of all legal heirs of opposite party. On the other hand when prosecution of the

1 (2010) 8 SCC 685

proceedings passes away, it is unnecessary to inquire about names of legal heirs and straightway application can be filed by the legal heirs themselves. However, when the opposite party dies, the application cannot be filed without first knowing the names of all legal heirs.

9) So far as, the judgment of the Apex Court in ***Om Prakash Gupta alias Lalloowaand Ors. V/s. Satish Chandra***[2]**,** is concerned, the same essentially relates to the issue of duty cast upon the pleader to only communicate the factum of death and absence of any duty to communicate the names of legal heirs. The judgment, in that sense does not deal with the issue of demonstration of sufficient cause in applying for setting aside the abatement upon death of a Defendant in the suit. Judgment of Andra Pradesh High Court in ***Gurjala Bharathi and Anr. V/s. Vindhay Corporation and Ors.***[3] is again on the same point of absence of any provision for giving intimation about particulars of the legal representatives.

10) The judgment of the Apex Court in ***Katari Suryanarayana and Ors. V/s. Koppisetti Subba Rao and Ors.***[4] relied on by Mr. Khan, involved dispute between the neighbors. There was delay of 7 years in bring on record legal heirs despite having knowledge about death the opposite party. In the facts of that case, the Apex Court has thought it appropriate not to condone the delay.

2 2025 SCC OnLine SC 291
3 2007 SCC OnLine AP 470
4 (2009) 11 SCC 183

11) The judgment of this Court in ***Sojabai Babulal Chaudhari V/s. Ramdas Shivram Chaudhari***[5] relied upon by Mr. Khan, involved a case where the Second Appeal had remained pending for 8 long years without moving even once and that factor is taken into consideration by this Court for not condoning the delay of 1518 days is bring on record legal heirs of the sole Defendant. The judgment is thus clearly distinguishable.

12) Considering overall conspectus of the case, in my view, an opportunity needs to be granted to Plaintiff to prosecute the suit on merits. The suit is instituted against 2 Defendants. If the Suit is permitted to be abated only against one Defendant, the trial therein would seriously be impaired. It has been established that the Plaintiff has been vigilant in respect of taking of steps *qua* the death of Defendant No. 1. In my view therefore, in the facts of the present case, sufficient cause is made out for setting aside the order of abatement by bringing on record the legal representatives of Defendant No. 1.

13) The Petition accordingly succeeds. The order dated 5 February 2014 passed by the Trial Court is set aside. Chamber Summons No. 641 of 2013 is made absolute in terms the prayers made therein. Necessary amendments shall be carried out in the suit within a period of 4 weeks.

14) The Writ Petition is **allowed** in above terms. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

5 MANU/MH/7667/2024

Signed by: VAISHNAVI MAHADEV SHEJAL
Designation: PA to Honorable Judge
Date: 28/08/2026 17:22:49