

(2009) 09 BOM CK 0097
In the Bombay High Court
Case No : Writ Petition No. 945 of 1995

Keru Homa Aushikar

APPELLANT

Vs

Bhau Ganpat Bhambre and Others

RESPONDENT

Date of Decision : 14-09-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 1 ALLMR 404 : (2010) 2 BomCR 833

Hon'ble Judges : Shinde S.S., J

Bench : Single Bench

Advocate : A.B. Tele, for the Appellant; T.S. Lodhe, A.G.P. for State and K.M. Nagarkar, for the Respondent

Final Decision : Dismissed

Judgement

Shinde S.S., J.—This writ petition is filed challenging the Order dated 15/11/1994 below Exhs. 17, 18 and 19 in Regular Civil Appeal No. 277 of 1988 passed by the Additional District Judge, Ahmednagar, thereby rejecting the application for condonation of delay and application to bring legal representatives of deceased respondent/original plaintiff on record.

2. The learned Counsel appearing for the petitioner submitted that the Court has not properly considered the provisions of Order 22 of the Code of Civil Procedure. The learned Counsel further submitted that the sufficient cause was shown for condonation of delay for bringing legal representatives of deceased Bhau on record. The learned Counsel further submitted that the Advocate of the defendant has not intimated to the Court or to the Advocate of the plaintiff about the death of deceased Bhau. Therefore, the lower Appellate Court should have observed as per Order 22, Rule 9-A of the CPC that it is obligatory on the defence to inform about the death of deceased Bhau. The learned Counsel further submitted that the lower Appellate Court by imposing some reasonable cost, should have allowed the application for condonation of delay in filing application to bring legal representatives on record in the interest of justice. It is

further submitted that the lower Appellate Court should have observed that the said Appeal was sent for the purpose of preparation of paper book and, therefore, the matter was not taken up on board. More over, when the Advocate of the respondent informed to the Court vide Exh. 13 about the death of the respondent Bhau, it was not intimated to the Advocate of the petitioner in respect of the death of deceased Bhau. It is further submitted that the present petitioners are residing far away from Ahmednagar city and they are permanent resident of Nepti and, therefore, the petitioner has no knowledge about the death of deceased Bhau. The learned Counsel further submitted that no prejudice or injustice would be caused to the respondents herein if the application for condonation of delay and application for bringing legal representatives on record of deceased Bhau is allowed. The learned Counsel further submitted that the delay caused in bringing legal representatives of respondent/original plaintiff is neither intentional nor deliberate. The learned Counsel further invited my attention to the pleadings and grounds in the petition, annexures thereto and submitted " that writ petition deserves to be allowed.

3. The learned Counsel for the respondent submitted that the lower Appellate Court has taken into consideration the factual position and came to the definite conclusion that the application which is filed for condonation of delay for bringing legal representatives of respondent does not disclose sufficient cause. Learned Counsel invited my attention to page 3 of Order passed by the Court below and submitted that, during the pendency of the Appeal, the respondent/landlord died on 7/6/1985 at Ahmednagar. The learned Counsel for the respondent Shri. N.B. More placed on record a pursis on 14/6/1985 vide Exh. 13. The Roznama/Order sheet dated 14/6/1985 of Regular Civil Appeal No. 277 of 1988 shows that Mr. Mirikar, the Counsel for the appellant as well as Mr. Shro Mone, the Counsel for the respondent were present in the said Appellate Court. On that day, a requisition was sent to the record keeper to submit record and proceedings of the trial Court. Similarly, on the same day, a pursis about the death of the respondent/landlord came to be placed on record by the Counsel for the respondent vide Exh. 13. It clearly shows that the Counsel of the respondent came to know on 14/6/1985 by virtue of said pursis Exh. 13. Therefore, the learned Counsel would submit that, when the lower Court has recorded the findings and which is not perverse, this Court may not interfere under extra ordinary jurisdiction of this Court under Article 227 of the Constitution of India. The learned Counsel further invited my attention to other paragraphs of the impugned order. The learned Counsel further submitted that the provisions of Law of Limitations will come into play as soon as no application for bringing legal representatives is filed within 60 days from the death of the original plaintiff/ landlord. The learned Counsel would submit that, even otherwise also as per the provisions under the Limitation Act, as soon as 60 days time is over, the Appeal came to be automatically abated. The learned Counsel further submitted that, on facts, the Court held that the distance between the residence of the petitioner herein and deceased plaintiff is in close vicinity and it can not be believed that

the petitioner was not aware about the death of the deceased plaintiff and that too during pending Appeal before the lower Appellate Court.

4. After hearing the learned Counsel appearing for the petitioner and respondent and after perusing the Order passed by the lower Appellate Court, I am of the considered view that the lower Appellate Court has taken a reasonable view on the basis of the pleadings and evidence placed on record, which does not warrant any interference in extra ordinary jurisdiction of this Court under Article 227 of the Constitution of India. The lower Appellate Court framed necessary points for its determination and in paragraph 10, the Court has observed that, the Court is not satisfied that by the contents of the application at Exhs. 18 and 19 that the respondent/appellant learnt about the death of the respondent deceased recently and so delay of 7 years, 8 months and 25 days. The lower Appellate Court further observed in paragraph 12 of the Order that, the pursis Exh. 13 dated 14/6/1985 on record clearly shows that the Court was informed about the death of the respondent/landlord took place on 7/6/1985 and the Counsel of the appellant was present in the Court on that day in the said matter. More over, the tenant/appellant is residing in the neighbour hood of the respondent/ landlord and he must have also learnt about the death of the respondent/landlord on 7/6/1985 or within reasonable time from 7/6/1985. Therefore, the lower Appellate Court held that the case is not made out by the present appellant.

5. On careful perusal of the impugned order, more particularly, the reasons assigned by the lower Appellate Court in paragraphs 10 to 14. I am not inclined to interfere. Therefore, viewed from any angle, the lower Appellate Court has recorded finding on facts that the distance between the residence of the original plaintiff and appellant herein is not that far that the appellant was not aware about the death of the respondent/original plaintiff. That apart, Exhs. 13, the pursis which was filed on record in 1985 itself in presence of the Advocate for the appellant herein, is the date of knowledge to the appellant. Therefore, by no stretch of imagination the inordinate delay of more than 7 years could not have been condoned by the lower Appellate Court. It is unbelievable that, the appellant herein who is prosecuting remedy of appeal, that too as a tenant, was unaware of the death of the original plaintiff. Therefore, the writ petition stands dismissed. Civil Application, if any, stands disposed of in view of disposal of main writ petition.