

(2012) 04 BOM CK 0065
In the Bombay High Court
Case No : Writ Petition No. 413 of 2009

Mary Pereira and Others

APPELLANT

Vs

Anant Mahadev Vengurlekar alias Babi Vengurlekar, since
deceased through his legal representatives and Ors

RESPONDENT

Date of Decision : 20-04-2012

Acts Referred:

Citation : (2012) 04 BOM CK 0065

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : Vivek Rodrigues, for the Appellant;

Judgement

F.M. Reis, J.—Heard Shri V. Rodrigues, the learned Counsel appearing for the petitioners. None for the respondents though served. The above petition challenges the order dated 30/04/2009 whereby an application to bring on record one of the legal representatives of the deceased respondent no. 1 as well as application for condonation of delay came to be rejected.

2. The short point for consideration in the present petition upon hearing learned counsel appearing for the petitioner is whether an application to bring the legal representatives of the excluded heir along with an application for condonation of delay also requires a prayer for setting aside abatement.

3. The facts which curl out from the records are that the deceased defendant no. 1 expired on 21/09/2007. Upon his death, the petitioner filed an application dated 2/11/2007 to bring the legal representatives of the deceased defendant no. 1 on record. At that stage, the petitioners gave the names of two of his legal representatives who were accordingly brought on record. Thereafter, on 7/01/2008 as the petitioners learnt about the names of the remaining legal representatives of the deceased respondent no. 1, an application came to be filed to bring the said legal representatives on record. An application for condonation of delay was also filed to that effect. The respondents opposed to the said prayer.

The learned Judge by the impugned order dismissed the application to bring the legal representatives on record as well as the application for condonation of delay. The only ground on which the application to bring the legal representatives of the deceased respondent no. 1 on record was rejected is that the application for setting aside abatement was not filed.

4. It is well settled that once some of the legal representatives have already been brought on record within the time prescribed, the question that there was abatement of the suit for not bringing the legal representatives of the deceased on record would not arise. The petitioners had rightly filed an application to bring the other legal representatives on record along with the application for condonation of delay. Hence, the learned Judge was not justified to dismiss the application on the specious ground that an application to set aside abatement was not filed and therefore I find that the impugned order cannot be sustained and deserves to be quashed and set aside. The learned Judge as such erroneously dismissed the application filed by the petitioner whilst passing the impugned order. In view of the above, I pass the following order:

ORDER

- (i) The rule is made absolute in terms of prayer clause (a).
- (ii) The petition stands disposed of accordingly.