

(2008) 01 BOM CK 0014

In the Bombay High Court

Case No : Misc. Civil Application No. 588 of 2007 in Second Appeal No. 37 of 1999

Mr. Manuel D"Costa and Others

APPELLANT

Vs

Mrs. Eugenia V. D"Costa

RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:

Citation : (2008) 01 BOM CK 0014

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : M. Conception, for the Appellant; Sapna Mordekar, for the Respondent

Final Decision : Dismissed

Judgement

N.A. Britto, J.—The sole Respondent in Second Appeal No. 37/1999 and Respondent No. 6 in Second Appeal No. 38/1999 expired on 7/11/2002 and an application to set aside the abatement has been filed by the Appellants on or about 1/08/2007 and to condone the delay of more than four years (1727 days) in filing the same, the Appellants have filed an application for condonation of delay. Heard learned Counsel on behalf of both the parties. Admittedly, the deceased Eugenia Victoria D"Costa was a neighbour of the Appellants and as stated on behalf of the Respondents, in their affidavit-in-reply dated 26/11/2007, the Appellants were well aware of the death of the said Eugenia Victoria D"Costa, being her immediate neighbours, since her dead body was brought to her residence for the last rites, though she was not buried in the village cemetery. It is therefore obvious that the Appellants inspite of knowing about the death of the said Respondent Eugenia Victoria D"Costa took no steps to bring on record her legal representatives. In fact it has been stated by the Appellants themselves (in para 5 of the application) that they came to know about the death, about a month of the said death and yet again the Appellants took no steps to bring on record the legal representatives of the said deceased Respondent.

2. Thereafter, on or about 18/08/2004 the Appellants (Judgment Debtors) informed the Executing Court in Execution Application No. 33/98/A about the death of deceased and on or about 8/09/2004, on behalf of the deceased decree holder legal representatives filed an application to amend the cause title, and, yet the Appellants took no steps to bring on record the legal representatives of the deceased Respondent in the Second Appeals.

3. On or about 21/11/2006, according to the appellants, the legal representatives of deceased Respondent are stated to have filed an application before this Court stating that the appeal had abated and according to them it is at that stage that the appellants came to know the names of the legal representatives of the said deceased Respondent. However, as already seen, all the names of legal heirs of deceased Respondent were already before the Executing Court and they ought to have known the same. In any event, it must be observed that it was expected of the Appellants, as neighbours of the deceased Respondent to have known at least some of the names of her legal heirs, if not all. The Appellants then filed applications before this Court being MCA Nos. 206 and 207 of 2007 which came to be disposed of by order dated 26/07/2007. The same were dismissed as withdrawn. It was then stated that there was delay of 1575 days in filing the same. However, it is seen from the order dated 26/07/2007 of this Court that no leave to file an fresh application was granted in favour of the Appellants. It further appears that the said two applications bearing MCA Nos. 206 and 207 of 2007 were casually filed and only in affidavit dated 11/07/2007, it was stated that there was a delay of 1575 days. The Appellants having been the neighbours of the deceased Respondent must certainly have been aware of her death when her dead body was brought to her residence, in the neighbourhood of the Appellants. It would not have been difficult for them to know at least some of the names of the legal representatives of deceased Respondent. In any event, it is their own case that they came to know of the death about a month after the death of deceased Respondent but took no steps whatsoever to bring on record her legal representatives. The approach of the Appellants has always been casual. There is no cause shown by the Appellants for the condonation of such a long delay, much less a sufficient cause. It is also submitted on behalf of the Respondent that in case the Appellants had applied certified copies on 20/02/2007 and collected the same on 22/02/2007, the same ought to have been reflected on the Roznama of the proceedings of the trial Court in the execution application, since when the legal representatives of the deceased had applied for such certified copies, their names are reflected in the Roznama of the said proceedings, and therefore, their averments as regards applying and collecting certified copies are not correct and supported by any evidence. Be that as it may, from whatever angle one looks at the case of the Appellants, it appears that their conduct has been always of inaction and negligence and therefore the application for condonation of delay is bound to fail. The same is hereby dismissed.