

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW Exh.22
IN
R.A. E. SUIT NO. 762 / 1168 /2009

Smt.Kshama Haresh Mehta, & Ors., Plaintiffs
V/s.
Zaver Iswar Defendant
AND
Smt.Bhikhi Babu Solanki & Ors., Respondents

Coram: Shri.K.P. Kshrisagar
Judge,
C. R. NO.15
Date: 11/3/2016

:ORDER BELOW EXH :

1. This is an application for setting aside the abatement of the suit.

2. In short it is the case of plaintiffs that there are more than 100 tenants in the suit property. The tenants are not residing in the suit property and they are shifted to alternate premises provided to them at Nahur , Bhandup and the tenants to whom alternate premises are provided are also not residing there. In such circumstances it is difficult to find whether tenant is alive or not and whether he has any heirs. After taking out application for brining heirs of the deceased tenant on record it is transpired that the suit is abated. Therefore, plaintiffs prayed to set aside the abatement.

3. The respondents / proposed defendants opposed the application. It is their case that application is barred by limitation. The

/home/court15/cr15201015/september2015-notice/exh22rae1168of2009.odt

plaintiffs were aware that defendant was expired on 1/9/2010 but they failed to bring on record heirs and legal representative of deceased defendant. They admitted that recently plaintiff became aware that defendant expired on 1/9/2010 and thereafter plaintiffs tried to make inquiry about heirs of deceased defendant. No sufficient and cogent reasons are given for setting aside the abatement. Therefore, the respondents/ proposed defendant submitted to dismiss the application.

4. Heard both sides.

5. The learned counsel for plaintiff submitted that there is sufficient cause for condonation of delay and setting aside the abatement as mentioned in the application. On the other hand the learned advocate for respondent/ proposed defendant submitted that there is no sufficient cause for condonation of delay and setting aside abatement.

Perused the record. Admittedly the defendant in the present case has filed written statement. Admittedly, the defendant expired on 1/9/2010. The perusal of record reveals that inspite of same the advocate for the defendant had not informed the fact about death of the defendant to this court as per Order 22 , Rule 10A of the CPC. Moreover, it is not the case of respondent/ proposed defendant who are the heirs of deceased defendant that they had intimated said fact to the plaintiff immediately after death of the defendant. Admittedly, plaintiff is a trust and it is having several tenants. Therefore, there appears substance in the case of plaintiffs that it is very difficult to find out which tenants are alive or dead. Moreover, respondents/ proposed defendants admitted the fact that plaintiffs recently became aware

/home/court15/cr15201015/september2015-notice/exh22rae1168of2009.odt

about death of the defendant on 1/9/2010. Therefore, from the admission itself it reveals that plaintiffs were not aware about the death of defendant No.1 on 1/9/2010. Moreover, the advocate for the defendant has also not informed the fact of death of defendant to this court or to the plaintiff. Therefore the plaintiffs were not supposed to have knowledge about the death of the defendant on 1/9/2010. Considering the above facts and the nature of the suit there appears sufficient cause for condonation of delay in filing application for setting aside the abatement and for setting aside abatement of the suit due to death of the defendant on 1/9/2010. Therefore application deserves to be allowed. Hence, the following order.

ORDER

1. Application is allowed.
2. Delay in filing present application is condoned.
3. The abatement of the suit due to death of the defendant is set aside.

(K.P. Kshrisagar)
Judge,
C R No.15,
Date: 11/3/2016

Order dictated on : 11/3/2016
Order typed on : 2/5/2016
Order draft printed and checked on : 5/5/2016
Order corrected on : 5/5/2016
Order printed on : 10/5/2016
Order signed on : /5/2016

suit proceeding received on : 10/5/2016

/home/court15/cr15201015/september2015-notice/exh22rae1168of2009.odt

/home/court15/cr15201015/september2015-notice/exh22rae1168of2009.odt