

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW Exh.17

IN

R.A. E. SUIT NO. 762 / 1168 /2009

Smt.Kshama Haresh Mehta, & Ors., Plaintiffs
V/s.
Zaver Iswar Defendant
AND
Smt.Bhikh 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 brining the legal heirs of the defendant on record.
2. In short it is the case of plaintiffs that they recently came to know that defendant expired on 1/9/2010. The respondents/ proposed defendants are the heirs and legal representative of the deceased defendant and vide letter dated 21/2/2014 they informed them about the death of defendant. Therefore , the delay if any for filing the application be condoned and respondents/ proposed defendants who are the heirs of the deceased defendant be brought on record by allowing the plaintiff to carry out amendment as per schedule annexed with the application.
3. The respondents/ proposed defendants opposed the application. It is their case that suit is already abated. Therefore application is not maintainable. They admitted that they are the only

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heirs and legal representative of the deceased defendant. The plaintiff was will aware about the death of the defendant. Therefore, application be dismissed.

4. Heard both sides. Perused the record. The copy of death certificate annexed with the application corroborates the case of the plaintiffs that defendant expired on 1/9/2010. The respondents/ proposed defendants also admitted the fact that defendant expired on 1/9/2010 and they are the heirs of deceased defendant. Perusal of the record reveals that defendant has filed his written statement in the present suit. It reveals that after death of the defendant advocate appearing for the defendant did not inform said fact to the court or to the plaintiff as per Order - 22 , Rule 10 of CPC. From the copy of letter annexed with the application it reveals that respondents recently vide letter dated 22/2/2014 intimated the plaintiff about the death of the defendant. Therefore, there appear substance in the case of plaintiffs that recently they became aware of the fact of death of defendant. The application taken out by the plaintiff for setting aside abatement exh.22 is already allowed. Therefore, there appear no substance in the objection of the respondents/ proposed defendants. From the facts of the case there appear reasonable and sufficient cause for not filing application for bringing the heirs of the deceased defendant on record. Therefore, there is sufficient cause for condonation of delay. Moreover, there is no bar of limitation for carrying out amendment. Considering the above evidence and the nature of the suit and facts that the matter is pertaining to the valuable immovable property it will be appropriate to condone the delay in filing present application for brining the heirs of deceased defendant on record and to permit the plaintiffs to carry out amendment as per schedule as prayed. As such application deserves to be allowed. Hence, following order.

ORDER

1. The application is allowed.

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2. The plaintiffs are permitted to bring on record the legal heirs of the deceased defendant as prayed and to carry out amendment as per schedule within 14 days from the date of this order.

3. Costs in cause.

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

Order dictated on : 11/3/2016
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/home/court15/Desktop/30thapril2016-september2015-
notice/exh17rae1168of2009.odt