

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXHIBIT 28

IN

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

1. Smt. Kshama Haresh Mehta and ors.	...Plaintiffs
V/s.	
Zaver Iswar	...Defendant
And	
Trishla Amit Shah	...Respondent (proposed plaintiff No.3)

Nazim H. Matani : Advocate for the plaintiffs.

Mr. Deepak Thakre : Advocate for the defendant.

Coram : P. D. Zambre ,
Judge, C.R.No.15,
Date : 25.10.2017

ORAL ORDER :

The plaintiffs have filed this application for enlargement of time to comply the order under Section 148 of the Code of Civil Procedure, 1908 (for short 'the Code').

2. In short, it is application of the plaintiffs that in this matter court has pleased to allow the plaintiffs application for amendment of plaint by deleting name of defendant no. 3 and allowing new Trustee to be brought on record by an order dated 20.07.2017, but the trustees are busy duo to trust matters. Moreover, on account of demonetization and implementation of GST and for filing of Income Tax Returns, not personally concentrate on court matter. There are so many suits filed in one court but these are transferred in different courts. Therefore, amendment could not be carried out within time. Hence, prayed to condone the delay and to carry out amendment and prayed to allow the application.

3. Say of the defendant is called. The defendant has objected

the application, contending that no cogent reason is given for condonation of delay. Hence, the application is liable to be rejected with costs. It is contended that there are other plaintiffs on record to comply the order but application is silent about the other plaintiffs i.e other trustees. Hence, it is liable to be rejected. It is further contended that the plaintiffs are always remain present in the court and know about every dates progress in this matter, therefore the application is false and frivolous and deserves to be dismissed with costs.

4. Heard both ld. advocates for the parties. They argued to the tune of their application and say. Perused the application and say. I have gone through the record of the case, it appears that on four grounds the plaintiffs could not carry out amendment though order is passed. These reasons are, trustees are busy in other trust matters, due to demonetization, due to implementation of GST and filing of Income Tax Returns. One more ground given i.e some of the matters are transferred to different court, therefore, there is difficult to take follow up. After perusal of the reasons, due to demonetization and implementation of GST, they could not carry out amendment, does not appeal to the prudence as demonetization is implemented in the month of November 2016, amendment is allowed to be carried out in the month of July 2017. Moreover, after implementation of GST, they could not carry out amendment also does not appeal to the prudence. Therefore, those two reasons are appeared to be false. One more ground mentioned i.e due to filing of Income Tax Returns, they could not be personally concentrate of court matter, but that cause also does not appeal to the prudence as carrying out amendment and filing of income tax returns, are two different aspects.

5. One more ground is given i.e the matter is transferred to

different court. Therefore, they could not carry out the amendment. After perusal of record, it appears that 4 to 5 matters are transferred to this court. There is no record to show that notice is issued in respect of transfer of these matters from one court to another court. In this circumstances, possibility of non-concentration on every matter by the trustees cannot be ruled out. But it is appears that advocate of the plaintiffs has argued the matter, in the circumstance he should have abide by the order of the court, but, he is giving reason of knowledge to the parties. But, considering the reason of transfer of matters, though time is extended and delay is condoned, subject to costs, no prejudice will be caused to the defendant. On the contrary, if this application is rejected, newly added trustees will not be come on record. It will make chaos in the proceeding. In the circumstances, though the time is extended and delay is condoned subject to costs, it will suffice the purpose. Hence, the application is liable to be allowed subject to costs of Rs.500/-. Hence, the order :

ORDER

1. The application is allowed subject of costs of Rs.500/- (Five hundred only) to the defendant.
2. Delay in carrying out amendment is condoned.
3. The plaintiffs have to carry out amendment till next date without fail.

(P. D. Zambre)
Judge, C.R.No.15
25.10.2017

Dictated on	: 25.10.2017
Transcribed on	: 27.10.2017
Checked & signed on	: 21.11.2017