
REGULAR CIVIL SUIT NO. 96 OF 2018

Order below application at Exh. 34 :-

1. By way of filing the present application, the plaintiffs have prayed to condone the delay in preferring the application for bringing the heirs and legal representatives of deceased defendant no.1 - Banubibi Rasul Murad and for setting the abatement qua the deceased defendant no.1.

2. Read this application, plaint and other related papers on record. Heard Mr. A.P. Shah, learned advocate appearing for the plaintiffs and Mr. M.S.Kanungo, learned advocate & Mr. I.M. Sardar, learned advocate appearing for the defendants.

3. Having heard the learned advocates appearing for the respective parties and on perusal of the entire record, it appears that the original plaintiff has filed the present suit for Administration of the properties of deceased Rasul Murad Malek as per the Muslim law and also for permanent injunction against the defendants. However, during the pendency of the present suit, the defendant no.1 - Banubibi Rasul Murad expired on 24th August, 2019 and as such the sole plaintiff Rabiya Bibi Bashir Malek also expired on 19th June, 2019 prior to the death of the defendant no.1 - Banubibi Rasul Murad Malek and in such circumstances, the heirs of the original plaintiff could not bring the heirs and legal representatives of deceased defendant no.1 on the record of the present suit within the stipulated time and accordingly, the present suit is abated qua the

defendant no.1. It transpires from the record that prior to the death of the defendant no.1 – Banubibi Rasul Murad, the sole plaintiff also expired and as such the heirs and legal representatives of deceased plaintiff were brought on record by order dated 15th September, 2023 below application at Exh.31, which was passed after condoning delay and setting aside abatement. It is submitted that the heirs of the deceased plaintiff has no legal knowledge and they could not even joined themselves as the heirs of the deceased plaintiff on the record of the present suit within the stipulated time and since the defendant no.1 also expired after the death of the plaintiff, the heirs and legal representatives of original plaintiff has filed the present application for condonation of delay and setting aside the abatement qua the defendant no.1. It is submitted that the heirs and legal representatives of the deceased defendant no.1 are proper and necessary parties in the present suit and if they are brought on record of the present suit, it would not prejudice in any manner to the parties and, therefore, the plaintiffs has prayed to condone the delay of 3 years and 287 days in preferring the application for bringing the heirs and legal representatives of deceased defendant No.1 – Banubibi Rasul Murad and for setting the abatement qua the defendant no.1.

4. Mr. M.S.Kanungo & Mr. I.M. Sardar, learned advocates appearing for the defendants have fairly submitted that they have no objection if the present application be allowed and they have prayed to pass an appropriate order in the present application.

5. On perusal of the record, it appears that the plaintiff has filed the present suit for Administration of the properties of deceased Rasul Murad Malek as per the Muslim law and also for permanent injunction against the defendants. However, during the pendency of the present suit, the defendant no.1 - Banubibi Rasul Murad expired on 24th August, 2019, however, since the sole plaintiff also expired prior to the death of the defendant no.1 on 19th June, 2019, the heirs of the plaintiffs could not brought the heirs and legal representative of deceased defendant no.1 on the record of the present suit within the stipulated time and now the the heirs of the deceased plaintiff have filed the present application for condoning the delay in preferring the application for for bringing the heirs and legal representatives of deceased defendant No.1 - Banubibi Rasul Murad and for setting the abatement qua the defendant no.1. As such the heirs and legal representatives of the deceased defendant no.1 are required to be brought on record of the present suit within the period of 90 days as per the provisions of Art.120 of the Limitation Act, however, it transpires from the record that prior to the death of the defendant no.1 - Banubibi Rasul Murad, the original plaintiff Rabiya Bibi expired before two months and since the heirs of the plaintiff were not joined in the record of the present suit within stipulated time and in such circumstances, the delay has been occurred in filing the application for bringing the heirs and legal representatives of deceased defendant no.1.

6. In case of Union of India vs. Ram Charan, reported in AIR 1964 SC 215, the Hon'ble Supreme Court has held that the legal representatives of the deceased party may be substituted within 90 days as per the provisions of Article 120 of the Limitation Act and period of limitation begins to run from the date of death and not from the date of the knowledge.

7. In case of Bala Ram vs. State of H.P., reported in AIT 1994 HP 5, the Hon'ble Himachal Pradesh High Court has held that in an application for condonation of delay or setting aside the abatement, there must be averments disclosing sufficient grounds.

8. In case of M/s. Mohatta Brothers vs. Sheth Chaturbhai Chimanlal, reported in AIR 1982 Gujarat 96, our Hon'ble High Court has held that the court must take a liberal view and should not be over strict or highly technical while deciding such application.

9. In case of Bhagwan Swaroop vs. Moolchand, reported in AIR 1983 SC 335, the Hon'ble Supreme Court has held that the laws of procedure are devised for advancing justice and not impeding the same. Code of Civil Procedure is designed to facilitate justice and further its ends, not a penal enactment for punishment and penalties, not a thing designed to trip people up.

10. In the instant suit, it appears that after death of the defendant no.1, the heirs of the plaintiff could not join the heirs and legal representatives of deceased defendant no.1 within the stipulated time of 90 days and as discussed above, there is delay of about 3 years and 287 days in preferring the application for

bringing the heirs of the deceased defendant No.1 – Banubibi Rasul Murad on the record of the present suit and, accordingly, the plaintiffs have filed the present application praying for setting aside the abatement and for condonation of delay in preferring the application for bringing the heirs and legal representatives of deceased defendant No.1 – Banubibi Rasul Murad on the record of the present suit.

11. As discussed above, it is settled law that the court must take a liberal view and should not be over strict or highly technical while deciding such application for condonation of delay and more particularly when the cause survives, no technical objections are required to be considered. It is settled principle that technical objections should not come in doing full and complete substantive justice between the parties.

12. Looking to the facts and the circumstances of present case and in view of the decisions of the Hon'ble Apex Court as well as the decisions of our Hon'ble High Court, I am of the view that the reasons shown by the plaintiffs seem to be genuine and are sufficient enough to set aside the abatement and to condone the delay in preferring the application for bringing the heirs and legal representatives of deceased defendant No.1 – Banubibi Rasul Murad on the record of the present suit and, therefore, by adopting a liberal and pragmatic approach, the present applications are required to be allowed by condoning the delay and setting aside the abatement and, therefore, in the interest of justice, I pass the following order :-

O R D E R

The present application at Exh.34 is hereby ALLOWED.

The delay in preferring the application for bringing heirs of the deceased defendant No.1 – Banubibi Rasul Murad is hereby condoned and the abatement is hereby set aside under the provisions of Order 22 Rule 9 of the Code of Civil Procedure.

The application dated 7/6/2023 made by the plaintiffs for bringing heirs and legal representatives of the defendant no.1 – Banubibi Rasul Murad, in the present suit is hereby ordered to be recorded.

No order as to costs.

Pronounced in the open Court on this 3rd day of February, 2024.

Date: 3rd February, 2024. (Rajendra Ghanshyambhai Barot)
Principal Senior Civil Judge
Mangrol, District : Surat
Judge Code : GJ00572