

Order below Exh.294 in Commercial Suit No. 08/2023

Old Spl. Civil Suit 14/2019

Ramdil Resorts Pvt. Ltd. & Others**Vs.****Videocon International Ltd. & Another**

The plaintiffs no. 3 and 4 along with the proposed legal representatives of the plaintiff no.2 have filed this application under Section 5 of the Limitation Act for condonation of delay caused to set aside abatement against the plaintiff no.2 by contending that the plaintiff no.2 died on 25.12.2015 in Mumbai leaving behind a son Girish, widow Ramola and a daughter Upnit Bhairav Parikh. The son and widow are already party to this proceeding. Due to ailment of the plaintiff no.2 entire family was in grief. The family was shifted to Mumbai during ailment of plaintiff no.2. The plaintiff no.2 was the manager of the family. The plaintiff no.3 is widow and she is housewife. The plaintiff no.4 was busy in business and unaware about the legal provisions. In such circumstances, delay has been caused. The said delay is not intentional. Hence, this application.

2. The defendants filed reply vide Exh.296 and resisted this application by contending that the reasons given in the application are formal, no sufficient cause has been shown for the delay. The deceased had filed a suit in the capacity as a director of the company, so his legal heirs cannot be called as legal representatives. So urged to reject the

application.

3. Heard the Ld. Advocate appearing for the plaintiffs and defendants at some length. Gone through the material on record.

4. The suit is filed by four plaintiffs. The plaintiff no.1 is a Private Limited Company. According to the plaintiff nos. 2, 3 and 4 they are the shareholders of the plaintiff no.1 company. It is further assertion of the plaintiffs that they had borrowed sum of Rs.45,00,000/- from Maharashtra State Financial Corporation. To repay the said loan and for renovation of the hotel, the plaintiffs have taken credit facility of Rs.1,30,00,000/- from the defendant no.1. For the collateral security for the said credit facility, the plaintiffs had given the share certificates, title deeds, blank share transfer forms, undated blank resignation letters and also mortgaged flat situated at Taddeo road, Mumbai in favour of the defendant no.1. The defendant no.1 issued notice on 10.07.1997 to the plaintiffs and made demand of Rs.1,23,27,168/-. It is further asserted that on 08.09.1997, the defendant broke open the locks and taken forcible possession of the suit property. So the plaintiffs filed suit bearing no.497/1997 in City Civil Court, Mumbai for permanent injunction.

In reply filed to the interim application in the said suit, the defendants alleged that the Board meeting was held on

23.07.1997 and the defendants no. 4 and 5 were inducted as new directors of the plaintiff company. It is further alleged that on 24.07.1997 Board meeting was held and the plaintiff no. 2 and 3 submitted their resignations in the plaintiff no.1 company.

The plaintiffs challenged the said act and claimed the decree of mandatory and perpetual injunction about the possession of the suit property, for declaration of the status of the plaintiffs no. 2 to 4, so also for compensatory relief.

5. In said suit, the plaintiffs have filed the application Exh.294 for condonation of the delay caused to set aside the statutory abatement against the plaintiff no.2. The pleading of the plaintiffs clearly shows that the plaintiffs no. 2 to 4 filed this suit along with plaintiff no.1 company by asserting that the plaintiffs nos. 2 to 4 are the shareholders of the plaintiff no.1 company and the plaintiffs no.2 and 3 are the directors of the plaintiff no.1 company. This pleading of the plaintiffs clearly shows that the role of the plaintiff no.2 and 3 was/is in dual capacity; as a director of the plaintiff no.1 company, so also the shareholders of the plaintiff no.1 company.

6. In the reply (Exh. 289) filed by the defendants to the other applications, it appears that according to the defendants the question of director of the plaintiff no.1 company is decided in civil suit instituted before the Civil Court Aurangabad. The said suit was between the same

parties. The pleadings of both parties clearly shows about the reference of various suits and Writ Petitions between the parties. From such material on record it cannot be said that the role of the plaintiff no.2 was only as a managing director, so his legal representatives cannot be brought on record.

7. There is no dispute about the death of the plaintiff no.2 Dilip Jayanand Doshi on 25.12.2015. The plaintiffs have produced on record, the death certificate with list Exh.284. As per the provisions of Article 120 of the Limitation Act, the period of limitation prescribed to bring on record the legal representatives of the deceased is 90 days and the said period begins to run from the date of death of a party. As per provisions of Article 121 of the Limitation Act, the period of limitation to set aside abatement is 60 days and the said period begins to run after completion of 90 days from the date of death of the party. As per the provisions of Order XXII Rule 9 of the Code of Civil Procedure, the provisions of Section 5 of the Limitation Act are applicable for condonation of delay caused to set aside the abatement. The delay caused to set aside abatement can be condoned if sufficient cause is shown.

8. The plaintiff no.2 died on 25.12.2015 and this application has been filed on 19.04.2025. It appears that in the year 2018, the plaintiffs have filed such type of application vide Exh.231 however, the death certificate was not filed on record so that application was filed. This factual aspect is also

liable to be kept in mind. Further fact is that there was national lock-down from March 2020 to February 2022. This fact is also liable to be kept in mind. Further fact is that the deceased died leaving a widow, a son and a daughter as his heirs. His widow and son are already plaintiff nos. 3 and 4. So technically the entire suit doesn't come to an end. Only the legal representative of the deceased plaintiff no.2 who is not presently on record is his daughter.

9. The defendants have raised the issue about the director of the plaintiff no.1 company. The fact in issue for adjudication in this suit is the director of plaintiff no.1 company. So at this stage merely the plaintiff no.2 has instituted suit in the capacity as a director of the plaintiff no.1 company is not a ground to reject this application.

10. As discussed above, the role of the plaintiff no.2 is in dual capacity; as a director so also as a shareholder. Being a daughter of a shareholder of the plaintiff no.1 company, she definitely represents the deceased. So it cannot be said that the daughter of the deceased plaintiff no.2 has no right to ask to substitute her as a party to the proceeding in the capacity as a legal heir. Considering the delay caused to bring on record the legal representative of the deceased party and considering the nature of the present dispute and number of litigation between the parties in various courts and the reason given by the plaintiff/applicants for the delay, the said delay is liable to

be condoned subject to reasonable cost. Hence this Court pass the following order.

ORDER

The application is hereby allowed subject to cost of Rs.3,000/- (Three Thousand) payable to the defendants.

Wai
Dt: 16.10.2025

(D.B.Mane)
District Judge-2 Wai