

**IN THE COURT OF SMALL CAUSES AT MUMBAI**

**ORDER BELOW EXHIBIT 9**

**IN**

**MARJI APPLN NO. 70 OF 2018**

**IN**

**LE SUIT NO. 47/55 OF 2008  
(CNR – MHSCA2000162-2018)**

1. Shri Virji Peraj Bhatia Sanatorium & ors. ... Plaintiff

v/s

1. Mr. Jyotindra I. Joshi (since deceased) ... Defendant

2. Mr. Hemant I. Joshi & anr.

Shri D.C.Pathak : Learned advocate for the plaintiffs.

Shri M.N.Joshi: Learned advocate for the defendant

**Coram : K. M. Jaisingani,  
Judge, C.R.No.15,  
Date : 16.11.2019**

**ORDER BELOW EXH 9:**

1. The non-applicant No.3 has filed present application for dismissal of present MARJI application. The application is not replied by the applicants.

2. Heard learned advocate for non-applicant No.3 None present for applicants since long. Hence, the application is taken for

passing necessary order.

3. The applicants had filed LE Suit No. 47/55 of 2008, against the non applicant, which came to be dismissed in default by order dated 29/9/2017. The applicants have filed present MARJI application for condoning delay caused in taking out the application for restoration of the suit. By present application, the non applicant No.3 raised issue of the maintainability of the present application.

4. The non applicant No.3 submitted that present MARJI Application has been signed by only applicant No.2, but not rest of the applicant. So also, the vakalatnama is filed under the signature of applicant No.2 but not under signatures of other applicants. The MARJI Application and vakalatnama do not bear seal of the applicant No.1 trust. The learned advocate for the non-applicant No.3 submitted that all the applicants have not signed the MARJI application and therefore, the application is not maintainable. I carefully considered the argument advanced by learned advocate. But, the present application is filed by one of the plaintiff of the original suit under his signature. The applicant no.2 who has filed the present application claims to be managing trustee of applicant No.3 trust. Even if, the application is not signed by all the applicants, still the application is maintainable. One of the plaintiff can apply for restoration of the suit. Therefore, there is no substance in the objection raised by non applicant No.3.

5. The non-applicant No.3 further submitted that the applicant

No.1 is a public trust. The applicant No. 2 is claiming to be managing trustee of the trust. Already by judgment in LE & C Suit No. 4/4 of 2005, it has been held by this court that the applicant No.2 is not a trustee of the trust. The learned advocate for non applicant No.3 submitted that the applicant No.2 is pursuing the proceeding in his own individual capacity and without consent of rest of the applicant. There is no resolution passed by the trust for proceeding with the present matter. Therefore, the application is not maintainable.

6. In support of his submission, he placed reliance on **2014(3) ALL MR 592 Namdev Pandurang Khedkar vs. Shahi Gupta Masjid Chandrapur**, wherein Hon'ble Parent High Court held that secretary and trustee of the trust can file suit only after sanction or authorization in their favour. I have gone through the cited case. That case relates to authorization to trustees for filing of the suit. But present proceeding relates to the restoration of the suit. Whether the persons who had instituted that suit have been authorized by proper authority or otherwise cannot be looked into the present proceeding. Therefore, cited case is not helpful to the non applicant No.3.

7. Looking through aforesaid discussion, I have come to the conclusion that the applicant No.2 is one of the plaintiff in original suit and therefore, he can maintain the present proceeding. Whether he is managing trustee or otherwise as well as whether he is empowered by the trust or otherwise cannot be looked into at this stage. At this stage, it appears that the applicant No.2 is claiming to be managing trustee of

the applicant No.1 trust and he was one of the party to the original suit for which he intends to apply for restoration of that suit. He can very well maintain the application for delay caused in taking out application for restoration of that suit. Thus, there is no substance in the application. The application is liable to be rejected. Consequently, I pass following order.

**ORDER**

The application is rejected.

(K. M. Jaisingani)  
Judge, C.R.No.15  
16.11.2019

Dictated on : 16.11.2019  
Order typed on : 18.11.2019  
Checked & signed on : 20.11.2019