

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).20851/2009

(From the judgement and order(s) dated 06/05/2009 in WP No.7827/2008 of The HIGH COURT OF BOMBAY)

MANDAKINI D BHALERAO Petitioner(s)

VERSUS

RAM LABBHYA SURI(D) TR.LRS.& ORS. Respondent(s)

(With prayer for interim relief)

Date: 01/11/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s)

Mr. Shivaji M. Jadhav, Adv.

For Respondent(s)

Mr. Rajeev Sharma, Adv.  
Mr. Tara Chandra Sharma, Adv.  
  
Mr. Atul Y. Chitale, Sr. Adv.  
Ms. Nishtha Kumar, Adv.  
Mrs. Suchitra Atul Chitale, Adv

UPON hearing counsel the Court made the following  
O R D E R

This petition is directed against order dated 6.5.2009 of the Bombay High Court whereby the writ petition filed by the petitioner questioning the order of the trial Court, which refused to condone the delay in filing application for bringing on record the legal representatives of the deceased defendant was dismissed.

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We have heard learned counsel for the parties and carefully perused the record.

While dismissing the application for condonation of delay, the trial Court observed as under:-

"Now question falls for my consideration as to

whether that delay is explained by the plaintiff. In affidavit the plaintiffs' CA has told that due to his old age and due to harassment by the legal heirs of deceased defendant namely Rahiv could not take proper steps to take out chamber summons or to move Court in time. It is contended by Advocate Shri Damania for legal heirs of deceased defendant that the reasons given by CA of plaintiff are not sufficient to condone delay. He has also brought to my notice authorities reported in Smt. Madhuribai, appellant Vs. Grasim Industries Ltd. Nagda, respondent, AIR 1995 Madhya Pradesh Page 160 and M/s. Rishi Prabhat, petitioner Vs. Delhi Development Authority, respondent AIR 1995 Delhi page 9. I have gone through the authorities. Advocate for plaintiff also argued that the reasons made by CA of plaintiff are sufficient to condone delay. He has made a statement that there is a judgment of our High Court on this point. However, he has not cited any judgment. Considering the nature of case and knowledge of plaintiff about the death and legal heirs deceased defendant, I am of the opinion that the plaintiff has not properly explained the delay. The plaintiff ought to have vigilant over his cause. She slept over the matter for months together. Thus, as plaintiff failed to explain the delay and so this chamber summons cannot be allowed. Moreover, the plaintiff has not prayed to set aside abatement and on this count also chamber summons needs to be rejected."

In our view, the detailed reasons recorded by the trial Court for declining the petitioner's prayer for condonation of delay were based on correct analysis of the pleadings of the parties and learned single judge of the High Court did not commit any error by refusing to

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interfere with the discretion exercised by the trial Court not to condone the delay.

The special leave petition is accordingly dismissed.

(DEEPAK MANSUKHANI)  
Court Master

(PHOOLANWATI ARORA)  
Court Master