


 IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 77 OF 2021

Romesh Satyanarayan Sharma	}	
Sand Sadan, 10, Union Park, Age- 68	}	
Pali Hill, Khar (West),	}	
Mumbai-400 052.	}	.. Appellant

V/s.

1. Mrs. Swaran Singh Chawla	}
Sand Sadan, 10, Union Park,	}
Pali Hill, Khar (West),	}
Mumbai-400 052.	}

2. Mr. Parvinder Singh	}
Sand Sadan, 10, Union Park,	}
Pali Hill, Khar (West),	}
Mumbai-400 052.	}

3. Mrs. Anju W/o Dilip Singh Nagpal	}
KC-45-C, Ashok Vihar, Phase-I,	}
Near Water Tank,	}
New Delhi - 110052	}

4. Miss. Sheetal Sandeep Sawney	}
Sand Sadan, 10, Union Park,	}
Pali Hill, Khar (West),	}
Mumbai-400 052.	}

5. Ms. Disha Sandeep Sawney	}
Sand Sadan, 10, Union Park,	}
Pali Hill, Khar (West),	}
Mumbai-400 052.	}

6. Mr. Harcharan Singh Natha Singh	}
Chawla	}

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Sand Sadan, 10, Union Park, }
Pali Hill, Khar (West), }
Mumbai-400 052. }

7. Mr. Jasbir Singh Natha Singh }
Chawla }
Sand Sadan, 10, Union Park, }
Pali Hill, Khar (West), }
Mumbai-400 052. }

.. Respondents

WITH
INTERIM APPLICATION NO. 1898 OF 2019
IN
APPEAL FROM ORDER NO. 77 OF 2021

Romesh Satyanarayan Sharma .. Applicant

In the matter between

Romesh Satyanarayan Sharma .. Appellant
V/s.

Mrs. Swaran Singh Chawla & Ors. .. Respondents

Mr. Salil Shah a/w Mr. Hemang Engineer i/b Mr. Jitendra Shukla for Appellant.

Mr. Mutahhar Khan a/w Mr. Duj Jain, Mr. Rajan Yadav, Mr. Yash Jalandria, Soham Bhagwat i/b Kiran Jain & Co. for Respondents.

CORAM : FARHAN P. DUBASH, J.

RESERVED ON : 08th APRIL 2026

PRONOUNCED ON : 16th APRIL 2026

JUDGMENT :

1. The present Appeal impugns an order dated 13th September

2019 (**impugned order**) passed by the Trial Court dismissing Chamber Summons No. 701 of 2015 taken out by the Appellant/ Plaintiff in S.C. Suit No. 68 of 1987 in which he had sought setting aside the abatement of the suit and condonation of delay in preferring the said application for bringing the heirs and legal representatives of Natha Singh Sant Singh Chawla (**Defendant No. 1**) on record. Respondent Nos. 1 to 7 are the heirs and legal representatives of Defendant No. 1.

2. By the impugned order, the Trial Court dismissed the Chamber Summons with costs of Rs. 10,000/- payable by the Appellant to the contesting Respondent Nos. 6 and 7 by recording a finding that the Appellant had approached the Court with unclean hands and by making a false statement on oath. The Trial Court held that despite being aware that Defendant No. 1 had passed away more than 24 years ago (*viz.* on 29th October 1990) and despite being fully aware of his heirs and legal representatives, the Appellant failed to implead them. As a result, the Trial Court held that the suit stood abated and no case had been made out for setting aside the abatement.

FACTS OF THE CASE

3. It is necessary to set out a few relevant facts that are required to be considered by this Court whilst deciding the present Appeal. They are set out hereunder:

- (i) S.C. Suit No. 68 of 1987 was instituted by the Plaintiff seeking a declaration that he is the owner of $2/3^{\text{rd}}$ undivided share in the suit property being Plot No. 10 together with building known as '*Sant Sadan*' standing thereon, situate at Pali Hill, Khar, Mumbai 400052 with Defendant No. 1 being the owner of the remaining $1/3^{\text{rd}}$ share therein. The Plaintiff also sought partition of the suit property and other ancillary reliefs therein.
- (ii) The Plaintiff has claimed ownership of the said $2/3^{\text{rd}}$ undivided share in the suit property under a deed of conveyance dated 7th October 1981 stated to have been executed in his favour by Defendant Nos. 2 and 3.
- (iii) Disputes arose between the parties which led to various suits being filed by them against each other in respect of the suit property including *inter alia*, R.A.D. Suit No. 6835 of 1980 filed by the Plaintiff in the Small Causes Court at Mumbai; S.C. Suit No. 5690 of 1981 filed by Defendant No. 1 in the Bombay City Civil Court; S.C. Suit No. 2097 of 2011 filed by the Plaintiff in the Bombay City Civil Court; L.E. & C Suit No. 7/8 of 1983 filed by Defendant No. 1 in the Small Causes Court at Mumbai, etc.
- (iv) In the meanwhile, Defendant No. 1 – Mr. Natha Singh Sant Singh Chawla passed away on 29th October 1990.

- (v) Acknowledging this, in the said R.A.D. Suit No. 6835 of 1980, the Plaintiff is stated to have filed Interlocutory Notice No. 1750 of 1991 on 12th April 1991 to implead the heirs and legal representatives of the deceased Defendant No. 1 on record before the Small Causes Court. Thereafter, the parties are also stated to have acted upon the demise of Defendant No. 1 in some of the other suits, as more particularly reflected in orders passed therein, from time to time, including *inter alia*, order dated 11th September 1992 passed in S.C. Suit No. 5690 of 1981, order dated 31st July 1992 passed in Suit No. 4818 of 1992, etc.
- (vi) As a result, since about 1991, the Plaintiff is stated to have had knowledge of the demise of Defendant No. 1 and also information/details of his heirs and legal representatives. However, despite this, no amendment in that regard was made by the Plaintiff in S.C. Suit No. 68 of 1987 until 2013.
- (vii) In January 2013, the Plaintiff preferred Chamber Summons No. 250 of 2013 for setting aside the abatement of the suit and condonation of delay in preferring the said application for bringing the heirs and legal representatives of Defendant No. 1 – Mr. Natha Singh Sant Singh Chawla and impleading three

persons viz. (i) Gurucharan Singh Natha Singh Chawla (ii) Harcharan Singh Natha Singh Chawla (iii) Jasbir Singh Natha Singh Chawla, Respondent Nos. 1 to 3 therein in his place and stead.

(viii) Interestingly, in the affidavit in support dated 15th January 2013 filed by the Plaintiff, despite setting out the various litigation between the parties, he has not disclosed the exact date on which he is stated to have learnt about the demise of Defendant No. 1. Instead, he has deposed that:

"7)I say that the Plaintiff was never aware about the death of the deceased Defendant No. 1 till the hearing of the application in Suit No. 1711 of 1994 Before the Hon'ble High Court and the intervention of the Respondents therein in person to oppose the reliefs to be granted to them. I say that the Plaintiff as well as the CA both were lodged in Tihar Jail and could not remain present Before the Hon'ble High Court..."

(ix) The said Chamber Summons No. 250 of 2013 was vehemently opposed by the said Respondents. In the meanwhile, Mr. Gurucharan Singh Natha Singh Chawla – Respondent No. 1 to the said Chamber Summons No. 250 of 2013 passed away on 8th October 2013.

(x) As a result, the Plaintiff took out a separate Chamber Summons on 11th March 2015 being Chamber Summons No. 701 of 2015.

By an order of the same date, the earlier Chamber Summons bearing no. 250 of 2013 was disposed of as '*not pressed*'.

- (xi) However, in Chamber Summons No. 701 of 2015, the Plaintiff arrayed the heirs and legal representatives of late Gurucharan Singh Natha Singh Chawla as Respondent Nos. 1 to 5 and Harcharan Singh Natha Singh Chawla and Jasbir Singh Natha Singh Chawla – Respondent Nos. 6 and 7 therein, without seeking the other reliefs (of condonation of delay, setting aside of abatement, etc. that were sought in Chamber Summons No. 250 of 2013).
- (xii) As a result, on 13th October 2015, the Plaintiff took out yet another Chamber Summons bearing no. 1926 of 2015 to amend the Schedule (of amendment) of Chamber Summons No. 701 of 2015 to include the other reliefs therein. In this amendment, the Plaintiff also sought deletion of the names of Defendant Nos. 2 and 3 (who had passed away on 12th January 1995 and 9th September 2011 respectively) from the cause-title of the suit without seeking to implead their heirs and legal representatives.
- (xiii) Both these Chamber Summonses came to be vehemently opposed by the Respondents. By an order dated 12th April 2019, the Trial Court allowed Chamber Summons No. 1926 of 2015

permitting the Plaintiff to amend the Schedule (of amendment) of Chamber Summons No. 701 of 2015.

(xiv) In the affidavit in support of the said Chamber Summons No. 701 of 2015, there is no averment which discloses the exact date on which the Plaintiff is stated to have learnt about the demise of Defendant No. 1.

(xv) However, in the amended affidavit in support, the Plaintiff has added that:

“4A) I say that I came to know about the demise of the Defendant No. 1 in the year 2011/2012 when the Plaintiff herein had filed a Suit bearing No. 2097 of 2011 before the Hon’ble City Civil Court at Dindoshi, Goregaon, Bombay, whereat the Advocate for Respondent Nos. 6 and 7 herein had intimated that the Defendant No. 1 had expired since long back, however, the Respondent Nos. 6 and 7 had failed to comply with the provisions of Order 22 Rule 10A of C.P.C.1908...”.

(xvi) By the impugned order dated 13th September 2019, the Trial Court dismissed the Chamber Summons on several grounds, *namely:*

(a) the Plaintiff had filed the said Chamber Summons No. 701 of 2015 on a false basis and by making a false statement that liberty was granted to him to file a fresh Chamber Summons whilst the earlier Chamber Summons No. 250

of 2013 was disposed of, when no such liberty was given by the Court as per order dated 11th March 2015;

- (b) from the documents of various judicial proceedings filed by the Respondents, the earliest of which was an affidavit dated 12th April 1991 filed by the original Plaintiff in Interlocutory Notice No. 1750 of 1991 in R.A.D. Suit No. 6835 of 1980, it is revealed that he had full knowledge not only of the demise of Defendant No. 1 but also of his heirs and legal representatives and as a result, the statement made by the Plaintiff on oath that he came to know of the demise of Defendant No. 1 only in 2011/2012 was totally false;
- (c) despite knowledge of the above, the Plaintiff deliberately failed to bring the heirs and legal representatives of deceased Defendant No. 1 on record in the suit;
- (d) the suit abated on account of the fact that the Plaintiff failed to bring the heirs and legal representatives of the deceased Defendant No. 1 on record, within the timelines prescribed in Articles 120 and 121 of the Limitation Act, 1963;

- (e) the reasons given by the Plaintiff for seeking the reliefs sought in the said Chamber Summons were absolutely false and he had come to Court with unclean hands which prompted the Trial Court to impose costs of Rs. 10,000/- on him payable to Respondent Nos. 6 and 7.

APPELLANTS' SUBMISSIONS

4. Mr. Salil Shah, learned Counsel appearing for the Appellant submits that the Trial Court has adopted an unduly technical approach while considering the Chamber Summons and the issue of delay. He submits that under Order XXII Rule 10A of the Code of Civil Procedure, 1908 (**CPC**), the pleader appearing for the deceased party is under an obligation to inform the Court about the death of the party and that, in the absence of such steps, the Appellant cannot be non-suited on the ground of delay alone. He submits that the Trial Court erred in passing the impugned order without considering this legal position inasmuch as, in the present case, the heirs and legal representatives of deceased Defendant No. 1 failed to bring the demise of Defendant No. 1 to the notice of the Plaintiff before the Trial Court.

5. Mr. Shah further points out that the Trial Court failed to appreciate that his client was incarcerated in Tihar Jail for 13 years between 20th October 1998 and 2011 during which time, he could not effectively

prosecute or be diligent about the different proceedings pending before various fora and the procedural requirements of each such litigation and thus, his client had no proper knowledge of the death of Defendant No. 1 in the suit filed before the Trial Court.

6. He submits that the Plaintiff was represented by his constituted attorney, who did not understand English and especially the legal submissions made in the pleadings/affidavits filed in the various proceedings and was dependent solely on legal advice given by his advocates. Mr. Shah therefore submits that the delay in preferring the application was neither deliberate nor with any *mala fide* motive and that, in the interests of justice, an opportunity ought to have been granted to the Plaintiff and the abatement of the suit against Defendant No. 1 ought to have been set aside and the delay in preferring the said application ought to have been condoned and the Respondents ought to have been impleaded as Defendants in place and stead of Defendant No. 1 so that the suit could be decided on the merits.

7. Mr. Shah further submits that the Trial Court erred in holding that the suit stood abated under Order XXII Rule 4(1) of the CPC by relying on Article 120 of the Limitation Act. He submits that even after the expiry of the prescribed period of limitation, abatement is not automatic until a formal order to that effect is passed by the Court seized of the matter.

8. He therefore submits that the impugned order is required to be

set aside and this Court should permit the Plaintiff to amend the plaint in terms of the Schedule (of amendment) to the Chamber Summons after setting aside the abatement of the suit and condoning the delay in preferring the said application.

RESPONDENTS' SUBMISSIONS

9. In response, Mr. Mutahhar Khan, learned Counsel who appears for the Respondents supports the impugned order passed by the Trial Court. He submits that the Chamber Summons has been rightly dismissed by the Trial Court after recording a finding that the Plaintiff had come with unclean hands and by making a false statement on oath.

10. He submits that the Plaintiff was aware of the demise of Defendant No. 1 since as far back as 1991 and relies on the affidavit dated 12th April 1991, filed by the Plaintiff in Interlocutory Notice No. 1750 of 1991 taken out in R.A.D. Suit No. 6835 of 1980, wherein the Plaintiff had himself sought to implead the heirs and legal representatives of Defendant No. 1 on record in the said suit pending in the Small Causes Court at Mumbai by acknowledging that Defendant No. 1 had passed away on 29th October 1990. He therefore submits that the statement made by the Plaintiff in the amended affidavit in support of the Chamber Summons that he came to know about the demise of Defendant No. 1 only in 2011–2012 is therefore

ex facie false and incorrect.

11. He submits that even after April 1991, the factum of the demise of Defendant No. 1 was acted upon by the parties in various other litigation that was pending between them and therefore, it is totally false on the part of the Plaintiff to feign ignorance of the same and claim such knowledge, only in 2011/2012. He relies on orders passed and/or pleadings filed in Suit No. 4818 of 1992; Suit No. 1711 of 1994; Suit No. 5690 of 1981; Suit No. 2661 of 1987 and Execution Application No. 13 of 2007 in support of his said contention.

12. By relying on the above, Mr. Khan is at pains to point out that despite such prior knowledge, the Plaintiff deliberately suppressed this material fact from the Trial Court and instead, made false statements on oath which disentitle him to any relief. He relies on the decision of the Apex Court in *S. P. Chengalvaraya Naidu vs. Jagannath*¹.

13. He relies on Order XXII Rule 4 of the CPC and Article 120 of the Limitation Act and contends that the Plaintiff was required to implead the heirs and legal representatives of the deceased Defendant No. 1 within the prescribed period failing which, the suit abates. He points out that the Plaintiff had knowledge of the passing of Defendant No. 1 since 1991 and hence, the Chamber Summons was hopelessly time-barred since the same did

¹ AIR 1994 SC 853

not set out and/or explain the delay and show sufficient cause for its condonation. In that regard, he relies on the decision of the Apex Court in *Union of India vs. Jahangir Byramji Jeejeebhoy*².

14. Mr. Khan further submits that the reliance on Order XXII Rule 10A of the CPC by the Plaintiff is entirely misconceived and the same would not apply to the present case. In support, he relies on the decisions of the Apex Court in *Binod Pathak vs. Shankar Choudhary*³ and *Om Prakash Gupta alias Lalloowa vs. Satish Chandra*⁴.

ANALYSIS & FINDINGS

15. I have heard both parties at some length and with their assistance, also perused the record. After careful consideration and for the reasons more particularly recorded hereinbelow, I am of the opinion that there is no infirmity with the impugned order and the view taken therein by the Trial Court.

16. At the outset, I concur with the Trial Court that the Plaintiff has approached the Court with unclean hands and by making a deliberate false statement on oath that he acquired knowledge of the demise of Defendant No. 1 only in the year 2011–2012. I have perused the documents relied upon by the Respondents and they reveal an entirely different story. They also

2 2024 SCC OnLine SC 489

3 2025 SCC OnLine SC 1411

4 2025 SCC OnLine SC 291

undeniably expose the patently false case with which he had approached the Trial Court and also this Court. The affidavit dated 12th April 1991 filed by the Plaintiff in Interlocutory Notice No. 1750 of 1991 taken out in R.A.D. Suit No. 6835 of 1980 expressly records that Defendant No. 1 had expired on 29th October 1990 and seeks to bring his heirs and legal representatives on record. That apart, the said parties have also acted upon the demise of Defendant No. 1 in some of the other suits, as more particularly reflected in orders passed therein, including *inter alia*, order dated 11th September 1992 passed in S.C. Suit No. 5690 of 1981; order dated 31st July 1992 passed in Suit No. 4818 of 1992.

17. In the face of this record, the statement of the Plaintiff on oath that he acquired knowledge of the demise of Defendant No. 1 only in 2011/2012 cannot be accepted. As more particularly held in ***Chengalvaraya Naidu*** (*supra*), a party who approaches the Court with unclean hands is disentitled to any reliefs and he can be summarily thrown out at any stage of the proceedings. Thus, the Trial Court was fully justified in holding that the said statement was untrue and that the Plaintiff had approached the Court with a false case and thereby, being disentitled to the reliefs sought in the Chamber Summons.

18. Once it is held that the Plaintiff had knowledge of the demise of Defendant No. 1 since 1991, the inordinate delay of about 24 years remains

wholly unexplained in the affidavit in support of the Chamber Summons. No satisfactory cause has been shown explaining the delay and why no steps were taken in the present Suit for all these years.

19. It is well settled that condonation of delay is not a matter of course. The law of limitation confers upon the successful party a valuable right which cannot be lightly disturbed. The Supreme Court in ***Jahangir Byramji Jeejeebhoy*** (*supra*) has emphasized that the Court must arrive at an independent judicial satisfaction as to whether ‘*sufficient cause*’ has been made out for the entire period of delay. The discretion to condone delay, though equitable in nature, is required to be exercised judicially and not on mere sympathy or indulgence. The applicant must furnish a reasonable, bona fide and satisfactory explanation demonstrating that despite due diligence the proceedings could not be instituted within time. Mere inaction, administrative delay or absence of diligence cannot constitute sufficient cause. The Court, therefore, is duty bound to scrutinize the explanation offered and balance the principle of substantial justice with the equally important requirement of certainty and finality in litigation. In the present case, the Plaintiff has miserably failed the test that is laid down by the Supreme Court. No sufficient cause has been made out which would justify the reliefs sought in the Chamber Summons and on this ground also, the same is required to be dismissed. There is thus no infirmity in the impugned order on this ground also.

20. *Next*, in order to consider the defense of Order XXII Rule 10A of the CPC that has been raised by the Plaintiff, it would be profitable to note the said provision, which reads thus:

“10A. Duty of pleader to communicate to Court death of a party — Wherever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.”

21. The ambit of Order XXII Rule 10A of the CPC is no longer *res integra*. In ***Binod Pathak*** (*supra*) and also in ***Om Prakash Gupta*** (*supra*), the Supreme Court has explained that Rule 10A casts a duty upon the pleader of a deceased party, on acquiring knowledge of such death, to inform the Court so that appropriate steps for substitution may be taken. The reason for the introduction of Rule 10A in the CPC (Amendment) Act of 1976 was to avoid procedural justice scoring a march over substantial justice. However, as held by the Court, the applicability of this provision would be inconsequential if the knowledge of demise of Defendant No. 1 was known to the Plaintiff.

22. In the present case, as held above, the Plaintiff was not only well aware of the demise of Defendant No. 1 since 1991 but also aware of the details of his heirs and legal representatives who were impleaded by the Plaintiff himself, in the other proceedings pending between the same parties before the Small Causes Court at Mumbai. Additionally, orders dated 31st

July 1992 and 11th September 1992 passed therein also clearly show that the Plaintiff had full knowledge of these details since 1992. In these circumstances, the Plaintiff's reliance on Order XXII Rule 10A of the CPC to contend that despite his said knowledge in the other proceedings, the present suit could not be said to abate on account of non-compliance with the said provisions, is entirely misconceived and I have no hesitation in rejecting this argument which runs contrary to the legislative intent behind its introduction. The Plaintiff cannot be permitted to use this plea to justify and/or nullify the effect of his own lackadaisical conduct in the present proceedings.

23. Similarly, the explanation that the Plaintiff acted through a constituted attorney and/or that his advocate did not take proper steps to explain the matter to him, does not constitute sufficient cause in the facts of the present case. A vague plea of attorney error or negligence, unsupported by a satisfactory account of the entire delay, cannot justify condonation of the huge delay of over two decades. This is more so in the facts of the present case where the parties were engaged in litigation across multiple fora across the city. As more particularly reiterated by the Supreme Court in *Jahangir Byramji Jeejeebhoy (supra)*, *"The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the 'sword of Damocles' hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the*

appellants”.

24. There is another aspect of the matter. The record shows that the Plaintiff had earlier filed Chamber Summons No. 250 of 2013, which came to be disposed of by an order dated 11th March 2015 as “*not pressed*”. In the impugned order, the Trial Court has correctly noted that no liberty was granted to the Plaintiff to file a fresh Chamber Summons and the statement to the contrary, made by him in the Chamber Summons was also rightly viewed with doubt. A party seeking discretionary and equitable relief is required to approach the Court with clean hands, and where the record discloses suppression of material facts and an inconsistent stand on oath, this Court is justified in declining relief to the said party.

25. Even otherwise, the suit seeks a declaration that the Plaintiff is the owner of 2/3rd undivided share in the suit property which is stated to have been purchased by him from original Defendant Nos. 2 and 3 who had passed away on 12th January 1995 and 9th September 2011 respectively. Since then, the Plaintiff has simpliciter deleted their names from the array of parties in the suit and not impleaded their heirs and legal representatives without any reason and/or justification for the same.

26. Having regard to the above consideration, analysis and findings, I am of the opinion that the said Chamber Summons deserves to be dismissed with costs and there is no infirmity with the impugned order

passed by the Trial Court.

27. Lastly, I have observed that whilst passing the impugned order dated 13th September 2019, the Trial Court directed the Plaintiff to pay costs of Rs. 10,000/- to Defendant Nos. 6 and 7 who were contesting the Chamber Summons. These costs were imposed since the Plaintiff was held to have approached the Court with unclean hands and with a false case on oath. I am informed that till date, these costs have not yet been paid. Instead, the Plaintiff has chosen to file the present Appeal and reiterate the same untenable plea/s before this Court despite clear and unequivocal documentary evidence. As a result, the Respondents have been constrained to spend 7 further years in litigation (from 2019 till date) in order to defend this Appeal and in the bargain, incur additional litigation expenses. Considering this conduct, whilst dismissing this Appeal, I am constrained to increase this amount and impose more realistic costs of Rs. 1,00,000/- on the Appellant which shall be payable by him to the contesting Respondents within a period of 30 days from the date of uploading of this order.

28. Accordingly, I pass the following order:

::ORDER::

- (i) The present Appeal From Order is dismissed.
- (ii) The Appellant shall pay costs of Rs. 1,00,000/- to

the Respondents within a period of 30 days from the date of uploading of this order.

- (iii) All pending Interim Applications/Civil Applications taken out in the present Appeal, if any, also stand disposed of in terms of this order, and all interim orders passed, therein if any, also stand vacated.

(FARHAN P. DUBASH, J.)

Ajay Jadhav