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**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRP(C.R.P.Art.227) No.6 of 2023

Lungningam Gangmei, now aged about 55 years, by occupation business,
S/o Poushonglung Gangmei, resident of Thengjang Village, P.O. & P.S.
Loktak Project, District – Churachandpur, Manipur – 795124.

..... *Petitioner/s*

– Versus –

Shougrakpam Purnima Singh, by occupation Govt. employee, S/o late Sh.
Tomba Singh, resident of Bishnupur Makha Leikai, Ward No.6, P.O. & P.S.
Bishnupur, District – Bishnupur, Manipur.

On his death on 20-12-2019, represented by his Legal Representatives,
namely :-

1. Shougrakpam Ongbi Abemma Devi, aged about 57 years, W/o late
Shougrakpam Purnima Singh, resident of Bishnupur Makha Leikai, Ward
No.6, P.O. & P.S. Bishnupur, District – Bishnupur, Manipur – 795126.
2. Shougrakpam Lomit Singh, aged about 28 years, S/o late Shougrakpam
Purnima Singh, resident of Bishnupur Makha Leikai, Ward No.6, P.O. & P.S.
Bishnupur, District – Bishnupur, Manipur – 795126.

3. Shougrakpam Dhakeshwar Singh, aged about 23 years, S/o late Shougrakpam Purnima Singh, resident of Bishnupur Makha Leikai, Ward No.6, P.O. & P.S. Bishnupur, District – Bishnupur, Manipur – 795126.

.... ***Respondent/s***

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioner/s : Mr. S. Sachindra, Advocate
Mr. K. Kopham, Advocate
For the Respondent/s : Mr. RK Milan, Advocate
Date of Hearing : 18.04.2023
Date of Judgment & Order : **13.06.2023.**

JUDGMENT & ORDER
(CAV)

[1] The question of law involved in the present petition is whether legal heirs of a deceased defendant, who are brought on record at the stage of the hearing of the suit, be permitted to file additional written statement within the meaning of Order 22 Rule 4(2) of CPC in addition to the written statement already filed by the deceased defendant.

[2] By way of the present Revision Petition under Article 227 of the Constitution of India, the petitioner/plaintiff has approached this Court challenging the correctness of the impugned order dated 13.12.2022 passed by the Ld. Civil

Judge, Sr. Division, Bishnupur in Judl. Misc. Case No.272 of 2022 [Ref:- Original (Money) Suit No.2 of 2014]. By the impugned order, the trial Court allowed the application of the newly impleaded legal heirs of the deceased sole defendant to file additional written statement even at the stage of hearing.

[3] The brief fact of the present case is that the petitioner/plaintiff, Lungningam Gangmei filed Original (Money) Suit No.2 of 2014 under Order XXXVII of CPC in the Court of the Civil Judge, Senior Division, Bishnupur against the original sole defendant, late Shougrakpam Purnima Singh (husband of respondent No.1 and father of respondent Nos.2 and 3 herein) for recovering a sum of Rs.20,40,000/- (Rupees twenty lakh and forty thousand) from the defendant with interest @ 6% per annum on the decretal amount from the date of decree till realization of the decretal amount.

[3.1] On 01.11.2013, the defendant approached the petitioner/plaintiff and requested for a loan of Rs.15,00,000/- (Rupees fifteen lakhs) as he was in urgent need of the same to invest in his Amway Business and would repay the loan with interest @ 4% per month on or before 31.07.2014 without fail. Being a friend, the petitioner/plaintiff paid the sum of Rs.15,00,000/- (Rupees fifteen lakhs) to the defendant on 01.11.2013. The defendant executed a money receipt dated 01.11.2013 (Annexure-A/1) in favour of the petitioner/plaintiff in presence of witnesses. On 22.01.2014, the defendant also executed a promissory note (Annexure-A/2) for a sum of Rs.15,00,000/- (Rupees fifteen lakhs) in favour of the plaintiff/petitioner to be repaid with interest @ 4% per month w.e.f. 01.11.2013.

The defendant also executed a loan agreement dated 22.01.2014 (Annexure-A/3) for borrowing a sum of Rs.15,00,000/- (Rupees fifteen lakhs) from the petitioner/plaintiff with an interest @4% per month w.e.f. 01.11.2013 and to be repaid on or before 31.07.2014 without fail. The defendant also agreed to execute a mortgage in favour of the petitioner/plaintiff of his homestead land under patta No.253 (old), 352/798 (new) covered by dag No.1214/1537 measuring an area of 0.12 acre situated at Bishnupur Ward No.6 within Village No.38 - Bishnupur Kha. If the defendant failed to return the amount within the stipulated time, the petitioner/plaintiff would be at liberty to enter into possession of the homestead land. The original defendant filed written statement to the money suit inter-alia denying the fact that he never approached the petitioner/plaintiff for a loan of Rs.15,00,000/- (Rupees fifteen lakhs) with an interest @ 4% per month. It is also averred that the petitioner/plaintiff did not have a valid license under Section 6 of the Bombay Money Lenders Act to do money lending business with interest. The defendant also denied the execution of the money receipt, promissory note and loan agreement in favour of the petitioner/plaintiff in presence of 2(two) witnesses. However, the defendant admitted that he signed on some blank stamp papers and blank papers with revenue stamp. It was prayed that the suit be dismissed.

[3.2] On 13.05.2015, the trial Court framed five issues. The petitioner/plaintiff produced four witnesses including himself and the defendant examined himself as witness on close evidence. Five issues framed by the trial Court are reproduced as:

I S S U E S
13 – 05 – 2015

1. Whether the Defendants borrowed/Loan a sum of Rs. 15,00,000/- (Rupees fifteen Lakhs) from the plaintiff by executing Promissory Note, Money received and Loan agreement or not?
2. Whether the Plaintiffs is a money lender or not if so he has a valid license? And whether the suit can not be proceeded U/s 10 of Bombay Money Lender Act?
3. Whether the documents are manufactured or not?
4. Cause of action?
5. Reliefs?

[3.3] Before final hearing of the suit, the defendant filed an application being Judl. Misc. Case No.167 of 2017 in the trial Court to decide issue Nos. 2 and 3 as preliminary issues. The application was dismissed on 29.05.2017 on the basis of res-judicata as the trial Court had already held in order dated 20.10.2016 in Judl. Misc. Case No.312 of 2016 that the petitioner/plaintiff was not a money lender and the said order, i.e. order dated 20.10.2016 attained finality. Subsequently, this Court also dismissed the petition being CRP(C.R.P.Art.227) No.27 of 2017 filed by the defendant herein challenging the order dated 29.05.2017 passed by the Ld. Civil Judge, Senior Division, Bishnupur in Judl. Misc. Case No.167 of 2017 [Ref:- O(M)S No.2 of 2014] and directed the Ld. Civil Judge, Senior Division to proceed with the case further.

[3.4] During pendency of the suit at the stage of argument, the defendant died on 20.12.2019 leaving behind the present respondents as legal representatives and they were brought on record as legal representatives of the deceased

defendant vide order dated 16.06.2022. Thereafter, the present respondents who are the LRs of the deceased defendant filed an application being Judl. Misc. Case No.272 of 2022 under the proviso of Rule 1 of Order 8 read with Section 151 CPC to grant leave for filing additional written statement on behalf of the newly impleaded LRs. The petitioner/plaintiff filed written objection to the application filed by the legal representatives of the deceased defendant seeking leave to file additional written statement inter-alia on the ground that the application is not maintainable and additional written statement cannot be filed by the LRs of the deceased defendant as they have no independent right, title or interest, dehors the interest of the deceased defendant.

[3.5] It is also stated that the deceased defendant had already filed his written statement of defence in the suit on 25.11.2014 and led his evidence in the proceedings of the suit and his evidence (DW hearing) was closed on 29.05.2019 and the matter was fixed for final argument on 20.06.2017 and the same was adjourned from time to time. It is also stated that provision of Order 22 Rule 4(2) of CPC stipulates that the party who is brought on record as legal heir of the deceased defendant can make a defence appropriate to his character as legal representatives of the deceased defendant who could not file written statement under Order 8 Rule 1 or 9 of CPC. It is also pointed out that the LRs of a deceased defendant have no right to file independent written statement of their own and they step in the shoe of the deceased defendant. Vide impugned order dated 13.12.2022 in Judl. Misc. case No.272 of 2022, the Ld. Civil Judge, Senior Division,

Bishnupur allowed the application to file additional written statement under the provisions of Order 22 Rule 4(2) of CPC and relying upon the decision of *the Hon'ble Supreme Court in the case of Sumtibai & Others Vs. Paras Finance Co.Regd. Partnership Firm Beaer (Raj.) through Mankanwar (Smt) W/O Parasmal Chordia (Dead) & Others reported as (2007) 10 SCC 82 @ Para 8* which reads as follows:-

"8. Every party in a case has a right to file a written statement. This is in accordance with natural justice. The Civil Procedure Code is really the rules of natural justice which are set out in great and elaborate detail. Its purpose is to enable both parties to get a hearing. The appellants in the present case have already been made parties in the suit, but it would be strange if they are not allowed to take a defence. In our opinion, Order 22 Rule 4(2) CPC cannot be construed in the manner suggested by learned counsel for the respondent."

[3.6] Being aggrieved by the impugned order, the petitioner/plaintiff filed the Revision Petition under Article 227 of the Constitution of India inter-alia on the following grounds:

A) For that, the Ld. Trial Court, while passing the impugned order wrongly applied the case law of Sumatibai & others Vs Paras Finance Co. Mankanwar, (2007) 10 SCC 82, which is factually different from the present case.

B) For that, in the present case the original defendant, before his death, contested the suit by filing written statement and after closing his evidence, final hearing of the suit was fixed and he died at the argument stage. Therefore his legal representatives cannot be permitted to set a new case or

to be allowed to file a fresh written statement in addition to the written statement already filed by the deceased defendant before his death.

C) For that, the Ld. Trial Court committed serious illegality and legal infirmity by allowing the legal representatives of the deceased defendant to file a fresh written statement at the stage of final argument of the suit.

D) For that, it is settled law that a legal representative steps into the shoes of the original deceased party, who died during the pendency of a proceeding and only represents the estate of the deceased. He is to continue the proceedings as could have done by the deceased, in whose place he is substituted as his legal representative.

E) For that, it is also settled law that a legal representative cannot take a hostile stand to that of the deceased defendant. It is the rights and liabilities of the deceased defendant which have to be considered and not those of the legal representatives themselves. All that the legal representatives can do is to take up the suit at the stage at which it was left when the original defendant died and to continue it. It is not open to them to assert their individual right or hostile title to the suit. They cannot take up a plea contrary to the one taken up by the deceased defendant.

F) For that, in the present case the loan agreement in question for borrowing money by deceased defendant from the plaintiff was signed between them only. The legal heirs or legal representatives of the deceased defendant were not a party in the loan agreement in question. Therefore the legal representatives of the deceased defendant have no right to file a fresh written statement of their own at the stage of final hearing of the suit, in addition to the written statement already filed by the deceased defendant.

G) For that, the impugned order suffers from perversity and is otherwise bad in law and liable to be set aside.

[4] On 02.02.2023, this Court issued notice returnable on 02.03.2023. The respondent Nos. 1, 2 and 3 were duly served on 10.02.2023 as per the tracking report issued by the postal department. In spite of giving opportunities, the respondents did not file any written objection to the petition and the matter was finally heard on 18.04.2023.

[5] Heard Mr. S. Sachindra, learned counsel for the petitioner assisted by Mr. K. Kopham, learned counsel and Mr. RK Milan, learned counsel for the respondents.

[6] Mr. S. Sachindra, learned counsel for the petitioner/plaintiff submits that the decision of the Hon'ble Supreme Court in the case of **Sumatibai & Others vs. Paras Finance Co. Mankanwar, (2007) 10 SCC 82** is not applicable in the fact of the present case. In the present case, the original defendant defended the suit by filing written statement and examined himself as DW (defendant witness) and the matter was fixed for hearing. At that stage, the defendant expired and the legal representatives of the deceased defendant were brought as the respondents. It is submitted that the legal representatives cannot be permitted to file fresh written statement in addition to the written statement already filed by the deceased defendant. It is emphasized that LRs cannot plead new grounds and they step into the shoes of the deceased defendant. It is also submitted that the legal representatives of a deceased defendant cannot take a hostile and different stand from that of the original defendant.

[6.1] Mr. S. Sachindra, learned counsel for the petitioner/plaintiff has distinguished the facts of the **Sumtibai case (supra)** from the present case. In that case, the joint purchasers of the disputed property were not made as defendants and only one of the joint purchasers was made as a defendant. After expiry of the defendant, the other co-owners filed an application to file additional written statement and the Hon'ble Court allowed the same under Order 22 Rule 4(2) of CPC as they were necessary party in the suit and they were not impleaded earlier by the plaintiff. Mr. S. Sachindra, learned counsel for the petitioner/plaintiff has pointed out that in the case in hand, the defendant executed a promissory note, money receipt and loan agreement in favour of the petitioner/plaintiff for borrowing a sum of Rs.15,00,000/- (Rupees fifteen lakhs) to be repaid with an interest @ 4% per month. The original defendant had filed written statement and adduced his defense witness and the matter was fixed for hearing. The respondents who are LR's of the deceased sole respondent, have no independent right to dispute the factum of the execution of the money receipt, promissory note and the loan agreement dehors the plea of the deceased defendant. The respondents just step into the shoes of the defendant and they cannot plead a different plea from the plea already taken by the deceased defendant. The learned counsel for the petitioner/plaintiff refers to the following case laws:

1. Babulal v. Jeshankar: AIR 1972 Cal 494
2. Smt. Dayali v. Kumari Lata: (2002) 03 RAJ CK 0089
3. NOIDA v. Pooran Singh: AIR 2004 All 218
4. Virgo Frozen Foods P. Ltd. v. SK Gandhi: (2012) 127 DRJ 339

to highlight the settled proposition of law that LR's of the deceased defendant should stand in his shoe and cannot take a different by filing additional written statement on their own and they should continue the suit from the stage at the time death of the defendant.

[6.2] Mr. S. Sachindra, learned counsel for the petitioner/plaintiff has also pointed out that the original written statement filed by the deceased defendant and the new additional written statement as proposed by the respondents/LR's of the deceased defendant are almost similar and it is just a repetition. It is prayed that the impugned order be set aside and the application seeking leave to file additional written statement be rejected and the matter be heard on merit by the trial Court.

[7] On the other hand, Mr. RK Milan, learned counsel for the respondents/LR's of the sole deceased defendant submits that once the respondents are made party, they have inherent right to file additional written statement within the meaning of Order 22 Rule 4(2) of CPC, otherwise they would not be able to defend the case properly and effectively. He further refers to Para 8 of the case in **Sumtibai & Others reported as (2007) 10 SCC 82 (supra)** which held that newly impleaded parties ought to be allowed to file defence as provided under Order 22 Rule 4(2) CPC.

[7.1] Mr. RK Milan, learned counsel for the respondents further submits that the present Revision Petition filed by the petitioner/plaintiff be dismissed being devoid of merit and the respondents be permitted to file additional written statement for doing complete justice in the matter.

[8] Considered the rival submissions of the parties at bar, perused the materials on record and the relevant case laws.

[9] In the case of **Abdul Razak v. Mangesh Rajaram Wagle: (2010) 2 SCC 432**, Hon'ble Supreme Court, after discussing a catena of earlier decisions, held that legal heirs could not plead inconsistent plea as different from that of the deceased defendant and if LRs intended to contest the suit on their own, they ought to implead themselves as defendants under Order 1 Rule 10 CPC to file independent written statement. Relevant para are reproduced below:

29. In *Jagdish Chander Chatterjee case*⁸ this Court interpreted the above reproduced provision and held: (SCC pp. 464-65, para 10)

"10. Under sub-clause (2) of Rule 4 of Order 22 of the Civil Procedure Code any person so made a party as a legal representative of the deceased respondent was entitled to make any defence appropriate to his character as legal representative of the deceased respondent. In other words, the heirs and the legal representatives could urge all contentions which the deceased could have urged except only those which were personal to the deceased. Indeed this does not prevent the legal representatives from setting up also their own independent title, in which case there could be no objection to the court impleading them not merely as the legal representatives of the deceased but also in their personal capacity avoiding thereby a separate suit for a decision on the independent title."

30. In *Bal Kishan case*⁹, the proposition laid down in *Jagdish Chander Chatterjee case*⁸ was reiterated, but its width was limited by observing that the same would apply only to those cases where the court hearing the case has jurisdiction to try the issues relating to independent title also. The facts of *Bal Kishan case*⁹ were that Respondent 1 therein filed a petition for eviction of the tenant by alleging that the latter had sub-let the premises without his consent. During the pendency of the petition, the tenant Musadi Lal died. Thereupon, the appellant Bal Kishan filed an application for being brought on record as legal representative of the deceased. The Rent Controller allowed the application. Thereafter, the appellant filed additional written statement asserting therein that the premises in question being residential and commercial, the legal heir of the tenant could not be treated as a tenant as defined under Section 2(h) of the Haryana Urban (Control of

Rent and Eviction) Act, 1973 and that possession of such legal heir of the tenant would be that of a trespasser. He accordingly prayed for dismissal of the eviction petition. The Rent Controller rejected the appellant's plea and allowed the eviction petition by holding that Musadi Lal had sub-let the premises to Med Ram without his consent. The appeal and revision filed by the appellant were dismissed by the appellate authority and the High Court respectively.

31. Before this Court, the appellant relied upon the ratio of *Jagdish Chander Chatterjee case*⁸ and argued that he was entitled to raise an additional plea that the eviction petition was not maintainable. While rejecting this plea, this Court held: (*Bal Kishan case*⁹, SCC p. 158, para 4)

"4. But in the instant case the appellant cannot claim the benefit of the above decision for two reasons. First, the appellant had not been brought on record as a respondent in the eviction petition in his personal capacity but had been brought on record only as the legal representative of Musadi Lal. Secondly, in the circumstances of this case, even if a prayer had been made to bring the appellant on record in his personal capacity, the Rent Controller could not have allowed the application and permitted him to raise the plea of independent title because such a plea would oust the jurisdiction of the Rent Controller to try the case itself.

*The observations made in Jagdish Chander Chatterjee case*⁸ have to be confined to only those cases where the court hearing the case has jurisdiction to try the issues relating to independent title also. The Rent Controller, who had no jurisdiction to pass the decree for possession against a trespasser could not have, therefore, impleaded the appellant as a respondent to the petition for eviction in his independent capacity."

32. In *Vidyawati case*¹⁰ this Court considered the question whether a person impleaded as a legal representative of the deceased defendant can independently claim title to and interest in the property under a will. It was contended by the appellant that claim of the original defendant and that of the legal representative are founded on the will executed by Champawati and the courts below were not right in refusing to permit her to file additional written statement. While approving the view taken by the courts below, this Court observed: (SCC p. 432, para 3)

"3. ... Whether the petitioner has independent right, title and interest dehors the claim of the first defendant is a matter to be gone into at a later proceeding. It is true that when the petitioner was impleaded as a party defendant, all rights under Order 22 Rule 4(2), and defences available to the deceased defendant became available to her. In addition, if the petitioner had any independent right, title or interest in the property then she had to get herself impleaded in the suit as a party defendant. ... [thereafter, she could] resist the claim made by the plaintiff or challenge the decree that may be passed in the suit."

For taking this view, the Court relied upon the judgments in *Jagdish Chander Chatterjee case*⁸ and *Bal Kishan case*⁹.

33. The judgments of *Bal Kishan case*⁹ and *Vidyawati case*¹⁰ are clearly distinguishable. In the first case, the earlier judgment in *Jagdish Chander Chatterjee case*⁸, which substantially supports the appellants was distinguished on the ground that the plea raised by the impleaded legal representative of the tenant was inconsistent with his defence and if accepted, the same would result in ouster of the jurisdiction of the Rent Controller. In the second case also, the Court found that the plea raised by the appellant, who was impleaded as legal representative of the defendant that she had independent title under the will executed by Champawati was not in consonance with the plea taken by the original defendant. However, as discussed in the earlier part of the judgment, the claim made by the appellants is in no way inconsistent with or derogatory to the defence set up by Abdul Razak. In any case, once the additional written statement filed by the appellants was taken on record without any objection by Respondents 1 and 2, who also led their evidence keeping in view the pleadings of the additional written statement, the High Court was not at all justified in allowing the application filed for striking off the additional written statement and that too without even advertng to Order 6 Rule 16 CPC and considering whether Respondents 1 and 2 were able to make out a case for exercise of power by the court under that provision.

8. (1972) 2 SCC 461

9. (1986) 4 SCC 155

10. (1995) 5 SCC 431

[10] It is admitted fact that money receipt, promissory note and loan agreement were executed between the petitioner/plaintiff and the deceased defendant. The deceased defendant had filed written statement, adduced defence witness and the matter was at the stage of hearing and on his death, his legal heirs were brought on record. On perusal of the written statement filed by the deceased defendant (Annexure-A/5) and the proposed additional written statement submitted by the LRs of the deceased defendant (Annexure-A/8), this Court does not find any new plea on behalf of the respondents/LRs in addition to those stated in the original written statement. In substance, the main plea in both the written

statements are almost same to the extent denting of borrowing of Rs.15,00,000/- (Rupees fifteen lakhs) by the defendant from the plaintiff/petitioner and execution of the money receipt, promissory note and loan agreement. The additional written statement as proposed by the respondents is filed for the sake of filing. It may also be noted that no relief is sought against the respondents by the petitioner/plaintiff. The fact of the present case is different from the case of **Sumtibai (supra)** where the LRs were the co-owners of the suit property and hence necessary parties and were held as entitled to file written statement as provided under Order 22 Rule 4(2) of CPC. In the present case, filing or non-filing of additional written statement will not make any difference in deciding the suit on merit as both have same contents. Moreover, the respondents have no independent right and no relief is claimed in the suit against them. This Court is of the opinion that the fact of **Sumtibai (supra)** is not applicable to the fact of the present case. Filing of additional written statement without any fruitful purpose will make unnecessary delay in the suit. LRs have to defend the suit on the basis of plea already taken by the deceased defendant.

[11] Accordingly, it is held that the respondents, who are LRs of the deceased sole defendant who had already filed written statement and contested the suit by adducing defense witnesses, are not entitled to file additional written statement within the meaning of Order 22 Rule 4(2) of CPC merely on the fact that they had been brought on record as LRs of the deceased defendant and that too, when the suit is at the stage of final hearing/argument.

[12] As a result, the impugned order dated 13.12.2022 passed by the Learned Civil Judge, Senior Division, Bishnupur in Judl. Misc. Case No.272 of 2022 allowing the respondents to file additional written statement as provided under Order 22 Rule 4(2) of CPC is set aside and the matter is to be proceeded further from the stage of final hearing.

[13] With these observations and findings, the Revision Petition being CRP(C.R.P.Art.227) No.6 of 2023 is allowed. The parties are to bear their expenses. It is clarified that this Court does not express any opinion on the merit of the case and anything stated herein shall affect the case of the parties and the same shall be confined to the facts required for disposal of this petition.

[14] Send a copy of this judgment and order to the Learned Civil Judge, Senior Division, Bishnupur for information and proceeding as per law.

JUDGE

FR/NFR

-Larson