

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION (ST.)NO.1623 OF 2013

Hajrat Pir Shamnamirsaheb Darga Miraj .. Applicant.
V/s.
Shri Maharudrappa B. Ichalkaranje
& Others .. Respondents.

Mr. M. S. Ansari i/b. Mr. R. M. Momin, for the Applicant.

CORAM: M.S.SONAK,J.

DATE : 13th APRIL, 2015.

PC:-

Leave is granted to convert this Revision Application into a Writ Petition. Necessary amendments to be carried out forthwith. Leave is granted to delete Respondent No.1, who has expired, at the risk and consequence of the Applicant.

2 Rule. None for the Respondents, though served.

3 The Applicant impugns order dated 6th September, 2011, which has dismissed the Petitioner's appeal, as having been abated. The learned Counsel for the Applicant submits that the legal heirs of Respondent No.2 had already been brought on record. Respondent No.2/1 was one of the legal heirs of Respondent No.2. Consequent upon his demise, there was no further necessity for bringing on record the legal heirs of deceased Respondent No.2/1, because the estate is sufficiently represented by other legal heirs of Respondent No.2.

3 The impugned order, has proceeded on the basis that the relief claimed by the Applicant is joint and indivisible. However, there is no consideration of the contention that the estate of Respondent No.2, having been well represented, the Appeal as a whole, did not abate.

4 Rather than decide the issue at this stage, in the absence of Respondents, who though served have not appeared, it would be appropriate if the impugned order dated 6th September, 2011 is set aside and the Appeal is restored to the file of District Judge-1, Sangli for fresh consideration on the issue as to whether or not the appeal can be said to have abated in its entirety. Further, upon restoration, the Applicant would be at liberty to take out appropriate application, if so advised, for taking steps to bring on record the legal heirs of deceased Respondent No.2/1, by way of abundant caution. The learned Counsel for the Applicant states that such application shall be made within a period of four weeks from today, at the latest. If such application is indeed made, the learned District Judge-1, Sangli to give appropriate notice to the Respondents on record and thereafter to proceed to decide the same in accordance with law. If such application is ultimately, granted then perhaps, there may be no occasion for dismissal of the appeal as abated. If, however, such application is rejected, District Judge-1, Sangli to consider the Applicant's contention that the estate of the deceased Respondent No.2/1 being well represented, there was no question of abatement of the entire appeal.

5 Accordingly, the impugned order dated 6th September, 2011 is set aside, subject to payment of costs of Rs.10,000/- by the Applicant to the Respondents. Such costs, shall be deposited by the Applicant in the Court of District Judge-1, Sangli within a period of four weeks from today.

Upon deposit, the appeal to stand restore to the file of District Judge-1, Sangli. The Respondents in appeal, to be permitted to withdraw such costs unconditionally. In case, costs are not deposited within a period of four weeks from today, this Petition shall be deemed to have been dismissed.

6 Rule is made absolute to the aforesaid extent. There shall be no separate order as to costs in this Application.

(M.S.SONAK,J.)