

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7258 OF 2014

Surendra Vasudeo Walavalkar

...Petitioner

vs.

The Dombivli Co-operative Housing
Society Ltd. & Ors.

...Respondents

Mr. S. M. Sabrad for the Petitioner.

Mr. Bhushan Walimbe i/b. Mrs. Preeti B. Walimbe for the Respondent
No.1.

CORAM : R. M. SAVANT, J.

DATE : 11th MARCH, 2015.

PC. :-

The writ jurisdiction of this Court is invoked against the order dated 1st July, 2014 passed by the learned District Judge-2, Kalyan, by which order, the application Exhibit 17 filed by the Petitioner to be brought on record as the legatee/legal representative of the deceased Mahadev Walavalkar and he be permitted to proceed further in the present Appeal, came to be rejected. The Petitioner is the Cousin of the said Mahadev Walavalkar who had filed the suit being Regular Civil Suit No.9/2004 for declaration and damages. The claim was revolving round the fact that the Plaintiff i.e. the said Mahadev Walavalkar was appointed as a catering contractor by the Respondent No.1 Society. The said suit came to be dismissed. Thereafter the said Mahadev Walavalkar has filed an Appeal. It is during the pendency of the Appeal that the said Mahadev Walavalkar expired. The

application Exhibit 17 filed by the Petitioner is founded on a declaration purportedly executed by the said Mahadev Walavalkar in favour of the Petitioner. The said declaration refers to a power of attorney executed by the said Mahadev Walavalkar in favour of the Petitioner so as to enable the Petitioner to prosecute the proceedings on behalf of the said Mahadev Walavalkar. In view of the death of the said Mahadev Walavalkar on 13th August, 2013, the power of attorney obviously comes to an end. The Trial Court considered the said application Exhibit 17 and on the ground that the applicant i.e. the Petitioner herein does not qualify to be brought on record under Order 22 of the Code of Civil Procedure, as also having regard to the definition of the legal representative as postulated in section 2 sub-clause (11) of the Code of Civil Procedure has rejected the said application. It is required to be noted that the heirs of the said Mahadev Walavalkar have filed an application for bringing themselves on record place of the said Mahadev Walavalkar who are Respondent Nos.5 to 7 in the above Petition. In my view, in the light of the facts which have been aforesaid, no case for intervention in the writ jurisdiction of this Court is made out. The Writ Petition is, accordingly, dismissed.

(R. M. SAVANT, J.)