

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2572 OF 2014
IN
WRIT PETITION NO.345 OF 2008**

**Free Trade Unions Multipurpose
Projects Trust : Applicant/Org.Respondent No.1**

In the matter between

**Mrs. Suman Rasiklal Mehta & Anr. : Petitioners
versus**

**Free Trade Union Multipurpose
Project Trust and ors. : Respondents.**

**Mr. Rohan Cama with Mr. Gaurao Mehta i/by M/s. Bachubhai Munim &
Co. for the Applicant.**

Ms. P S Cardozo AGP for the Respondent Nos.2, 4 and 5.

None appears for other Respondents though served.

**CORAM : R. M. SAVANT, J.
DATE : 13th February 2015**

P.C.

1 The above Civil Application has been filed for the following two
reliefs :-

- (a) That this Hon'ble Court be pleased to direct the Petitioners to provide Respondent No.1 with the names of the legal heirs and representatives of the deceased Petitioner No.1.
- (b) That this Hon'ble Court be pleased to pass an appropriate order directing that Respondent No.1 be permitted to carry out the necessary amendments to the papers and proceedings in Suit No.123 of 2007 filed before the learned Civil Judge, Senior Division, Alibaug for bringing on record the legal heirs and representatives of the deceased Petitioner No.1."

2 The above Civil Application has been filed by Free Trade Unions Multipurpose Projects Trust who is the original Respondent No.1 – to the above Writ Petition. Mrs. Suman Rasiklal Mehta and Mr. Kiran Rasiklal Mehta who are shown in the cause title of the above Civil Application are the Petitioners/Original Defendant Nos.1 and 2. The above Writ Petition has been admitted and there is an ad-interim order in terms of prayer clause (c) which is operating. By the said ad-interim order further proceedings in Special Civil suit No.123 of 2007 have been stayed. The Applicant in the above Civil Application, as indicated above, is the original Plaintiff in the said Special Civil Suit No.123 of 2007. The cause for filing the above Civil Application is the death of the Petitioner No.1/Defendant No.1 Mrs. Suman Rasiklal Mehta during pendency of the above Petition. Since the Applicant is the original Plaintiff in the said suit, the Applicant is desirous of bringing the heirs of the said Mrs. Suman Rasiklal Mehta on record in the suit. However, in view of the ad-interim order dated 21/01/2008 passed by this Court (Coram : S.C.Dharmadhikari,J) staying the proceedings in the said Special Civil Suit No.123 of 2007, that the Applicant is seeking leave of this Court to file an Application to bring the heirs of the Petitioner No.1 Mrs. Suman Rasiklal Mehta who is the original Defendant No.1 on record in the suit. It is the case of the Applicant that unless such leave is granted, the Trial Court may not entertain their application in view of the stay which is operating in the above Petition.

3 In so far as the Petitioner No.1 Mrs. Suman Rasiklal Mehta is concerned, it appears that in a suit filed by her in the City Civil Court being Suit No.107107 of 2006 (High Court Transferred Suit No.2867 of 2006), the heirs who are 4 in number have filed an application to bring themselves on record in the said suit. In so far as the heirs of the said Mrs. Suman Rasiklal Mehta are concerned, they are 1] Mayuri Ashok Mehta; 2] Shilpa Shailesh Mehta; 3] Nikita Paresh Kothari and 4] Kiran Rasiklal Mehta . In so far as Kiran Rasiklal Mehta is concerned, as indicated above, he is the Petitioner No.2 in the above Petition and is therefore already on record in his individual capacity in the above Petition.

4 The above Civil Application was listed on 02/12/2014 of which date a private notice was sought to be given to the advocate who is appearing for the Petitioners in the above Petition who is incidentally the wife of the said Kiran Mehta. The said notice is by letter dated 25/11/2014 addressed by the Attorneys of the Applicant, on the office copy of which an endorsement has been made by the said advocate Mrs. Manisha Kiran Mehta. It is not necessary to consider the endorsement made. Suffice it to state that in view of the endorsement made, it would have to be assumed that the advocate is aware of the above Civil Application and its listing.

5 The above Civil Application thereafter once again appeared on

30/01/2015 when this Court directed that notice be issued to the heirs of the Petitioner No.1 as the learned counsel appearing for the Applicant Shri Rohan Cama had informed this Court that the heirs had themselves made an application in the suit filed by Mrs. Suman Rasiklal Mehta in the City Civil Court, Mumbai. Accordingly notice was sought to be served on the said heirs. In so far as 3 heirs i.e. Mayuri Ashok Mehta, Shilpa Shailesh Mehta and Nikita Paresh Kothari are concerned, though hand delivery of the notice has been refused by them, they have been served through Blue Dart Couriers on 10/02/2015, the tracking report of which is annexed to the affidavit of service dated 12/02/2015 of the clerk of the Attorneys of the Applicant. The learned counsel appearing for the Applicant tenders the affidavit of service dated 12/02/2015 and also tenders photo copy of the letter dated 25/11/2014. In so far as Petitioner No.2 Kiran Rasiklal Mehta is concerned, to the earlier affidavit of service dated 25/11/2014, the notice dated 13/10/2014 is endorsed by the advocate for the Petitioners as having received the same on 14/10/2014. In so far as the latest service pursuant to the order dated 30/01/2015 is concerned, the tracking report discloses that the consignee i.e. Kiran Mehta is out of station on three dates i.e. 10, 11 and 12 of February. However, the learned counsel appearing for the Applicant Shri Rohan Cama, on instructions, states that the said Kiran Rasiklal Mehta was very much present in Mumbai and in fact was present in the City Civil Court on 11/2/2015 when the suit was listed in the City Civil Court. The learned counsel appearing for the Applicant

tenders the affidavit of service dated 12/02/2015 and also tenders photo copy of the letter dated 25/11/2014. The aforesaid facts, therefore, disclose that the heirs of the Petitioner No.1 Mrs. Suman Rasiklal Mehta have been served and that they are having knowledge of the above Civil Application.

6 The relief sought in the above Civil Application is only to the effect that the application for bringing the heirs of the Petitioner No.1/Original Defendant No.1 Mrs. Suman Rasiklal Mehta may be considered by the Trial Court which would otherwise not be considered in view of the stay which is operating in the above Writ Petition. It is well settled that even if the proceedings are stayed, the applications such as for bringing the heirs of a party who is dead pending the proceedings can be considered by the Trial Court, as otherwise the same is likely to cause prejudice to the concerned party who desires of bringing the heirs on record. The relief sought can therefore be said to be innocuous in nature as ultimately it is for the Trial Court to consider the said application. In view of the fact that the Applicant i.e. the original Plaintiff is now aware of the names of the heirs of the Petitioner No.1 Mrs. Suman Rasiklal Mehta, the relief sought vide prayer clause (a) of the Civil Application is not required to be granted. In so far as the prayer clause (b) is concerned, the said prayer appears to be too wide and need not be granted. The relief that can be granted to the Applicant is to the effect that the Applicant would be at liberty to move an application for bringing the heirs of

the original Defendant No.1 Mrs. Suman Rasiklal Mehta on record in the suit within four weeks from date, and if any such application is filed, the Trial Court would consider the said application having regard to the fact that the above Civil Application is pending in this Court since October 2014 as also the above Petition is pending in this Court. It is however clarified that the pendency of the above Petition and the stay which is operating would not be an impediment for the Trial Court to consider the said application. Needless to state that the Trial Court would consider the said application on its own merits and in accordance with law. With the aforesaid directions, the above Civil Application is disposed of.

[R.M.SAVANT, J]