

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6150 OF 2015

Dharmesh T. Parekh & Anr.	..	Petitioners
VS.		
M/s. Mansukhlal & Co. & Anr.	..	Respondents

Mr. Madhav Jamdar for Petitioners.
Ms Bhairavi A. Ranpise for Respondents.

CORAM : M. S. SONAK, J.
DATE : 05 AUGUST 2015

P.C. :-

- 1] Explanation submitted, in pursuance of Order dated 31 July 2015 is accepted.
- 2] This petition challenges the order dated 30 July 2014, by which, the widow of Mansukhlal Shah, who was described as sole surviving partner of M/s. Mansukhlal & Co. has been permitted to be impleaded as a party respondent.
- 3] The record indicates that RAE Suit No. 1976 of 2008 was instituted against M/s. Mansukhlal & Co. which was described as an unregistered partnership firm having its sole surviving partner Mr. Mansukhlal Shah. On the date of institution of the suit, the said Mr. Mansukhlal had already expired. On an application by Smt.

Manjulaben, the widow of Mr. Mansukhlal Shah, the trial Court has permitted her impleadment.

4] Mr. Jamdar, the learned counsel submits that by an order dated 3 November 2012, the trial Court had already declined leave to said Smt. Manjulaben to file a written statement as her connection with the defendant firm was never explained. In these circumstances, Mr. Jamdar contends that there was no question of permitting the impleadment of Smt. Manjulaben.

5] Having heard the learned counsel for the parties and perused the record, there is no reason to interfere with the impugned order. The order dated 3 November 2012, cannot operate as a *res judicata*, although, the principles of *res judicata* does apply to two different stages in the same suit. The order dated 3 November 2012 has stated that a person who is not a party to the proceedings, cannot, apply for leave to file written statement. By the impugned order, leave has been granted to Smt. Manjulaben to be impleaded as a party. There is no dispute that Smt. Manjulaben is the widow of late Mansukhlal Shah against whom, a suit came to be instituted in the first place. Mr. Mansukhlal Shah had already expired on the date on which the suit was instituted.

6] In the aforesaid circumstances, there is clearly no jurisdictional error in the making of the impugned order. This petition is accordingly dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka