

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 31 OF 2014

Amakaran Enterprises and anr. .. Petitioners
vs.
Aum-Kar Enterprises and ors. .. Respondents

Mr. Sham V. Walve for the Petitioners.
Ms Aparna Dhavle for the Respondent Nos.1 to 3.

CORAM : M. S. SONAK, J.
DATE : 19 MARCH, 2015

P.C. :-

1] There is absolutely no substance in this petition. The only contention raised by the learned counsel for the petitioners is that consequent upon the death of the plaintiff, right to sue does not survive and therefore, there was no question of permitting the plaintiff's heirs to be brought on record.

2] In this case, a Tripartite Agreement was entered into between the deceased plaintiff and the petitioners herein and the MIDC. The suit which was instituted by the deceased plaintiff seeks, *inter alia*, a declaration that such Tripartite Agreement was neither legal, nor binding. Upon demise of the plaintiff, the impugned order has permitted his legal heirs to be brought on record.

3] The learned counsel for the petitioners submits that consequent upon the parties entering into Tripartite Agreement, the lease hold rights possessed by the deceased plaintiff came to an end or in any case stood transferred to the petitioners. Relying upon the provisions contained in Section 111(f) of the Transfer of Property

Act, 1882, learned counsel contended that this is a case of determination of lease by '*implied surrender*'. In the light of such legal and factual position, the counsel contended that the right to sue did not survive upon the legal heirs of the deceased plaintiff.

4] The contention urged by and on behalf of the petitioners is misconceived. It was the case of the deceased plaintiff that the Tripartite Agreement was neither legal nor binding. The contention urged by and on behalf of the petitioners proceeds upon the premise that such Tripartite Agreement was legal and valid. This aspect is yet to be adjudicated in the suit. Therefore, considering the averments in the plaint, as also the relief sought for, it is clear that the right to sue survives and the impugned order was correctly made.

5] Accordingly, there is no reason to entertain the present petition. The petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

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