

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

MISC. CIVIL APPLICATION NO.316 OF 2015
IN
WRIT PETITION NO.4178 OF 2000

Madanlal s/o Kanwarbhan Ghundiyal,
Aged about 65 years,
Occupation – Nil,
R/o Dasturnagar,
Amravati.

... Applicant

Versus

1. M/s. Rajkot Mishtanna Bhandar,
a partnership firm,
Sant Kanwarram Market,
Amravati, through Smt. Shobha
wd/o Vasantbhai Adtiya,
R/o Sham Chowk,
Sant Kanwaram Market,
Amravati, since dead through
her legal representative
Mr. Anuj s/o Vasantbhai
Adtiya, aged about major,
R/o Behind Demart,
Near Tabakhe Welding Works,
Samurna, Amravati.

2. Deleted as per Court's order
dt. 14-8-2014.

3. The Additional Collector, Amravati.

... Non-Applicants

Shri M.G. Bhangde, Senior Advocate, assisted by Shri R.M. Bhangde,
Advocate, for Applicant.
Shri Anup Gilda, Advocate, as *Amicus Curiae*.

CORAM : R.K. DESHPANDE, J.

Date of Reserving the Order : 18th April, 2015

Date of Pronouncing the Order : 24th April, 2015

ORDER :

1. This application seeks review of the judgment and order dated 27-1-2015 passed by this Court dismissing Writ Petition No.4178 of 2000 challenging the orders passed by the authorities below refusing to grant permission to determine tenancy under clauses 13(3)(i), (ii) and (vi) of the C.P. & Berar Letting of Houses and Rent Control Order, 1949 ("Rent Control Order").

2. The undisputed factual position is that the authorities below acting under the provisions of the Rent Control Order refused to grant permission to the applicant-landlord to determine tenancy under clauses 13(3)(i), (ii) and (vi) therein. Writ Petition No.4178 of 2000 was preferred by the applicant-landlord challenging the said orders.

3. The writ petition was admitted on 31-7-2001. The

respondent No.1 M/s. Rajkot Mishtanna Bhandar, a partnership firm, consisted of two partners - (i) Smt. Shobha wd/o Vasantbhai Adtiya and (ii) Shri Bhupat Murarji Adtiya. By an order dated 14-8-2014, the name of the respondent No.2-Shri Bhupat Murarji Adtiya was deleted from the array of respondents. The matter was thereafter listed for final hearing on 15-12-2014, 5-1-2015, 7-1-2015, 12-1-2015 and 22-1-2015. The matter was then finally heard on 27-1-2015 and it was dismissed on merits. On 23-1-2015, that is four days prior to the decision of the writ petition, the another partner Smt. Shobha wd/o Vasantbhai Adtiya died. As per the averment made in the application, this fact could not be brought to the notice of the Court when the matter was decided on 27-1-2015. Hence, this application for review of the judgment and order delivered in Writ Petition No.4178 of 2000 has been moved.

4. This application for review does not seek rejoining of Shri Bhupat Murarji Adtiya, who was deleted from the array of respondents during the pendency of the writ petition. The respondent No.1, which is a proprietary concern, was joined through Smt. Shobha wd/o Vasantbhai Adtiya, and the applicant-landlord proposes to bring her legal representative Shri Anup s/o Vasantbhai Adtiya on record.

5. Shri M.G. Bhangde, the learned Senior Advocate, assisted by Shri R.M. Bhangde, Advocate, appearing for the applicant-landlord, has urged that the judgment and order delivered by this Court on 27-1-2015 becomes nullity, as it was delivered in a *lis*, which was not properly constituted. He submits that the contesting non-applicant/respondent died four days before the delivery of the judgment and order, and the Court was, therefore, not competent to proceed to hear and decide the matter on merits. He further submits that the applicant-petitioner was entitled to move an application for bringing the names of the legal representatives/heirs of the deceased non-applicant/respondent on record, and the Court could decide the matter only upon the legal representatives/heirs of the deceased non-applicant/respondent were brought on record. He has relied upon the two decisions of the Apex Court - (i) in the case of *Puran Singh and others v. State of Punjab and others*, reported in (1996) 2 SCC 205; and (ii) in the case of *Jaladi Suguna (Deceased) through LRs. v. Satya Sai Central Trust and others*, reported in (2008) 8 SCC 521.

6. The notices have not been issued in the matter. I have called upon Shri Anup Gilda, Advocate, to assist the Court as *amicus curiae* and to address on the aforesaid questions of law, to which he readily agreed. He has invited my attention to the decision of the Apex Court in the case of *N. Jyaram Reddy and another v. Revenue Divisional Officer and Land Acquisition Officer, Kurnool*, reported in (1979) 3 SCC 578, to point out the position of law that it is not in every case that the Court is required to dismiss an appeal or a petition as abated and it will depend upon the facts and circumstances of each case. He has also pointed out that in the said decision of the Apex Court, the decree passed by the Trial Court in favour of one Y. Prabhakar Reddy, one of the three claimants, was modified without bringing the names of his legal representatives on record and the decision was confirmed by the Apex Court. He has also relied upon the decision of the learned Single Judge of the Madras High Court in the case of *Surya Narayan v. Joga Rao and others*, reported in *AIR 1930 Madras 719*, to urge that it is not open to a party who was really heard at appeal and against whom a decree was passed on the merits to take advantage of the death of his opponent and claim a rehearing of the appeal on merits. He has also relied upon the

decision of the learned Single Judge of the Patna High Court in the case of *Tetar Devi and others v. Buchia and others*, reported in 1986(34) BLJR 173, wherein it is held that where a decree is passed in favour of a dead person, the decree need not be set aside and such decrees are voidable at the instance of the heirs of the deceased party.

7. On the basis of the contentions raised, the following questions are required to be decided in this review application :

(1) Whether this Court was competent to decide Writ Petition No.4178 of 2000 in favour of a deceased respondent on its own merits in the absence of his legal representatives/heirs brought on record and the decision so rendered becomes nullity?

(2) Whether the judgment delivered by this Court on 27-1-2015 dismissing Writ Petition No.4178 of 2000 challenging the orders passed by the authorities below in favour of the contesting non-applicant/respondent, need to be reviewed so as to permit the applicant-petitioner to bring on record the legal representatives/heirs of the

deceased-non-applicant/respondent?

8. In the decision of the Apex Court in *Puran Singh's* case, relied upon by the learned Senior Advocate Shri M.G. Bhangde, the order passed by the Additional Director, Consolidation of Holdings, in favour of one *Bir Singh* was challenged in writ petition. *Bir Singh* expired during the pendency of writ petition. The learned Single Judge of the High Court dismissed the said writ petition on the ground that no application for bringing the legal representatives of the deceased had been made and hence the writ petition was not maintainable in the absence of necessary parties. The Letters Patent Appeal was also dismissed by the Division Bench, holding that no steps were taken to bring the legal representatives of *Bir Singh* on record, and, therefore, the writ petition abated. The Apex Court maintained the order of the High Court and dismissed the appeal.

9. The question involved in *Puran Singh's* case was whether the provisions of Order XXII of the Code of Civil Procedure are applicable to the proceedings under Article 226 or 227 of the Constitution of India. In para 7, the Court has held that it cannot be held that the provisions contained in Order XXII of the Code are applicable *per se* to

the writ proceedings. The Court held that even if the provisions of Order XXII of the Code are not applicable to writ proceedings or writ appeals, it does not mean that the petitioner or appellant in such writ petition or writ appeal can ignore the death of the respondent if the right to pursue the remedy even after the death of the respondent survives. The Court further held that there is no question of automatic abatement of proceedings and in the absence of limitation of 90 days, the High Court has discretion to permit the substitution of the legal representatives and proceed with the hearing of the writ petition or writ appeal as the case may be. These are the principles laid down in the form of the ratio of the decision and the decision is not cited for this ratio.

10. In para 4 of the decision in *Puran Singh's* case, the Apex Court has held that if the right to sue is held to be a personal right, it stands extinguished upon the death of the concerned defendant/respondent, and it does not devolve upon his legal representatives or successors. In such situation, the suit cannot be continued. But if the right to sue survives against the legal representatives/heirs of the deceased respondent, then the procedure under Order XXII, Rule 4 of the Civil Procedure Code needs to be

followed by bringing the legal representatives/heirs of the deceased on record.

11. There cannot be any dispute over the principles of law laid down in para 4 of the decision in *Puran Singh's* case. The ratio of the decision in para 4 is not applicable to the facts of the present case. In *Puran Singh's* case, the writ petition was dismissed as abated and such decision was upheld by the Apex Court. Though the case was dismissed as abated, the Court made certain observations in para 4, which were not on the question involved before it. There cannot be any dispute over the proposition in para 4 that personal right to sue stands extinguished upon the death of the person concerned and it does not devolve upon the successors. It also cannot be disputed that if the right to sue survives against the legal representatives/heirs of the deceased respondent, then the procedure under Order XXII, Rule 4 of the Code of Civil Procedure need to be followed. In *Puran Singh's* case, neither the High Court nor the Apex Court proceeded to decide the matter on its own merits, in the absence of the legal representatives/heirs of the deceased, as has been done in the present case.

12. In the decision of the Apex Court in *Jaladi Suguna's* case, relied upon by the learned Advocate Shri M.G. Bhangde, a suit filed by one *Suguna* was decreed, granting a declaration that the gift-deed dated 27-3-1980 executed by her in favour of the defendant No.1-Trust to be void and the Trust was restrained from interfering with her possession. During the pendency of the appeal before the High Court, *Suguna*, who was the first respondent, died. An application under Order XXII, Rule 4 of the Civil Procedure Code to bring the husband of *Suguna* on record as her legal representative, was filed. The appellants before the Apex Court were nieces and nephews of *Suguna*, who had also filed an application to come on record as her legal representatives. The High Court directed the Trial Court to make an enquiry under Order XXII, Rule 5 of the Civil Procedure Code, but without determining the question as to who are the legal representatives of the deceased *Suguna*, allowed the appeal filed by the Trust and set aside the decree passed by the Trial Court. As a result, the suit filed by *Suguna* stood dismissed. The Apex Court set aside the decision of the High Court, restored the appeal and directed the High Court to first decide the question under Order XXII, Rule 5 of the Civil Procedure Code and then to proceed to dispose of the matter in accordance with law.

13. In para 14 of the decision in *Suguna's* case, the Apex Court has held as under :

“14. When a respondent in an appeal dies, and the right to sue survives, the legal representatives of the deceased respondent have to be brought on record before the court can proceed further in the appeal. Where the respondent-plaintiff who has succeeded in a suit, dies during the pendency of the appeal, any judgment rendered on hearing the appeal filed by the defendant, without bringing the legal representatives of the deceased respondent-plaintiff on record, will be a nullity. In the appeal before the High Court, the first respondent therein (Suguna) was the contesting respondent and the second respondent (the tenant) was only a pro forma respondent. When the first respondent in the appeal died, the right to prosecute the appeal survived against her estate. Therefore, it was necessary to bring the legal representative(s) of the deceased Suguna on record to proceed with the appeal.”

The Court held that where the respondent in an appeal dies and the

right to sue survives, the legal representatives of the deceased-respondent have to be brought on record, before the Court can proceed further in the appeal. It was further held that where the respondent-plaintiff, who has succeeded in a suit, dies during the pendency of the appeal, any judgment rendered on hearing the appeal filed by the defendant, without bringing the legal representatives of the deceased respondent-plaintiff on record, will be a nullity. It was further held that when the first respondent in the appeal died, the right to prosecute the appeal survived against her estate and it was, therefore, necessary to bring the legal representatives of the deceased *Suguna* on record to proceed with the appeal.

14. The principle of law laid down by the Apex Court in *Suguna's* case cannot be disputed and the ratio therein is not applicable to the facts of the present case. In *Suguna's* case, the respondent No.1, in whose favour a decree was passed by the Trial Court, died during the pendency of the appeal. The suit was in relation to the property of the deceased and the right to sue survived against the legal representatives/heirs of the deceased *Suguna*. The High Court proceeded to allow the appeal on merits that too against a dead person, without determining the question of legal

representatives/heirs of the deceased respondent on record, by setting aside the decree passed by the Trial Court, which was in favour of a dead person. The situation in Suguna's case was covered by a principle of law laid down in para 4 of Puran Singh's case and it would not apply to a situation where a decree passed in favour of a dead person is confirmed or upheld in an appeal or a writ petition.

15. In the decision of the Patna High Court in the case of *Tetar Devi*, pointed out by the learned Counsel Shri Gilda, the plaintiff No.2 died during the pendency of the suit before the Trial Court. The suit was decreed without making the heirs of the deceased-plaintiff No.2 as parties. The original defendant filed an appeal, which was dismissed. The ground urged before the High Court was that the appeal and the suit have abated, because the decrees have been passed in favour of a dead person. The Court has held that such a decree need not be set aside and it is only in case where the decrees are passed against a dead person that such question arises and that too such decrees are voidable at the instance of the heirs of the deceased party. It has been held that they can either refuse to contest the decree or they can be made parties at any stage of the proceedings and it can be done by the High Court or the matter can be remanded back to the lower Court for

that purpose and re-hearing. The Court has held that the decree in favour of the dead person cannot result in setting aside of the decree.

16. In the decision of the Apex Court in *N. Jayaram Reddy's* case, pointed out by the learned counsel Shri Gilda, the Reference Court, acting under Section 18 of the Land Acquisition Act, enhanced the compensation to some extent in favour of the claimants. Both the parties, viz. The Government and the claimants, preferred separate appeals before the High Court. The claimants claimed further enhancement of compensation, whereas the Government challenged the enhancement of compensation by the Reference Court. During the pendency of these appeals, one of the three claimants, viz. Y. Prabhakar Reddy, died. In the appeal filed by the claimants, his legal representatives were brought on record. However, the Government did not take any steps in its appeal to bring the legal representatives of the deceased on record. Both the appeals were decided by a common judgment delivered by the High Court. The appeal filed by the claimants was dismissed, whereas the appeal filed by the Government was allowed reducing the rate of compensation to some extent. Being aggrieved by the decision of the High Court, the claimants claimed a certificate to file an appeal, which was granted.

17. The decision of the Apex Court in *N. Jayaram Reddy's* case was by a Division Bench consisting of two Judges, who concurred with each other, but for separate reasons. In paras 5 and 6 of the said decision, the Apex Court rejected the contention that the High Court's decree was a nullity merely because it was passed against a dead person, viz. Y. Prabhakar Reddy. It holds that it has to be appreciated that a decree passed against a dead person is not necessarily a nullity for all purposes. It will be sufficient to say that such a decree has been held to be nullity because it cannot be executed against his legal representative for the simple reason that he did not have a full opportunity of being heard in respect of it, and the legal representative cannot be condemned unheard. It further holds that while the law treats such a decree as a nullity *qua* the legal representative of the deceased defendant or respondent, there is nothing to prevent him from deciding that he will not treat the decree as a nullity, but will abide by it as it stands, or as it may be modified thereafter on appeal. The Court has held that if a legal representative adopts that alternative or course of action, it cannot possibly be said that his option to be governed by the decree is against the law or any concept of public policy or purpose, or the public morality. The Court has further held

that it is thus a matter entirely at the discretion of the legal representative of a deceased respondent against whom a decree has been passed against his death to decide whether he will raise the question that the decree has become a nullity, at the appropriate time, viz. During the course of the hearing of any appeal that may be filed by the other party, or to abandon that obvious technical objection and fight the appeal on merits. In unequivocal terms, the Apex Court has held that it is equally futile to argue that an appellate Court is denuded of its jurisdiction to hear an appeal in which one of the respondents has died and the right to sue does not survive against the surviving defendant or defendants alone merely because no application has been made to bring his legal representative on the record when no objection to that effect is raised by anyone.

18. In view of the law laid down in *N. Jayaram Reddy's* case by the Apex Court, it has to be held that an Appellate Court or a Writ Court is not denuded of its jurisdiction to hear an appeal or a writ petition in which one of the respondents has died and the right to sue does not survive against the surviving respondent or respondents alone merely because no application has been made to bring his legal representatives on record, when no objection to that effect is raised by

anyone. Merely because one or more defendant(s)/respondent(s) in a suit, appeal, revision or writ petition dies, that by itself does not operate a bar for the Court to proceed to hear the matter on its merits in the absence of legal representatives/heirs of such deceased are brought on record. It will, therefore, depend upon the facts and circumstances of each case. In a given case, the Court can proceed to hear or deal with the matter on its own merits. While proceeding with the matter on merits, the Court will first find out whether the decision is likely to be rendered *against* a dead person or is likely to be *in any manner prejudicial to the interests* of the legal representatives/heirs of the deceased defendant/respondent. If the answers to any of these two questions is in the affirmative, the Court shall either wait for the steps to be taken under Order XXII, Rule 4 of the Civil Procedure Code or shall dismiss the case as abated. It need not proceed to decide the case on merits and deliver a judgment against the deceased or to set aside, modify or alter the decisions of the Courts below, which are in favour of the deceased defendant/respondent.

19. In view of the decision of the Apex Court in *N. Jayaram Reddy's* case, the Apex Court and the decision of the Patna High Court in *Tetar Devi's* case, even a decree passed against a dead person is not

necessarily a nullity for all purposes. Such decree becomes nullity because it cannot be executed against his legal representatives, who had no opportunity to have full opportunity of hearing and they cannot be condemned unheard. The decree against a dead person becomes avoidable at the instance of his legal representatives/heirs, who may not choose to avoid it or may abandon such objection and accept the decision on merits. If such mode is adopted, it cannot be held to be against the law, public policy or purpose, or public morality. It has, therefore, to be held that the Court does not become incompetent to decide the case on its own merits in the absence of legal representatives/heirs of the deceased defendant/respondent are brought on record. Whether any order or decree passed or judgment so delivered becomes a nullity, would depend upon the facts and circumstances of each case and no universal principle can be laid down.

20. None of the decisions of the Apex Court cited here, deal with the situation where a judgment, decree or order passed by the Courts below in favour of a deceased respondent(s) are confirmed or upheld by dismissing an appeal or writ petition without bringing the names of the legal representatives/heirs of such deceased on record, who died

during the pendency of such appeal or writ petition. In such a situation, it is always open for the Court to *dismiss* a suit, appeal, revision, writ petition, as the case may be, filed *against* the deceased defendant(s)/respondent(s) on its own merits or *to confirm or uphold* the orders passed by the Courts below *in favour of the deceased respondent(s)*, without bringing his/her or their legal representatives/heirs on record. It is open for the Court to decide a case *in favour of* the deceased or his/her legal representatives/heirs and for that purpose, it is not necessary to bring them on record. Such decision does not become in any manner illegal, nullity or void on this count and it can always be enforced at the option of the legal representatives/heirs of such deceased. The two decisions of the Apex Court in the cases of *Puran Singh* and *Jaladi Suguna* cannot be applied in all situations to come to hold that the Court is either prevented from proceeding to hear/deal with the matter or to decide it on merits in the absence of legal representatives/heirs of the deceased defendant(s)/respondent(s) are brought on record. In the present case, this Court was competent to decide the case on its own merits. The question No.1 is answered accordingly.

21. Though the argument of Shri M.G. Bhangde, the learned

Senior Advocate, that the applicant-petitioner has a right to bring the legal representatives/heirs of the deceased non-applicant/respondent on record seems to be attractive, it becomes redundant, if it is carried to its logical end. If the suit, appeal or writ petition is dismissed as abated, the provision of Order XXII, Rule 9 of the Civil Procedure Code provides for its effect, and sub-rule (1) therein states that where a suit abates or is dismissed under this Order, no fresh suit shall be brought. Same is the effect of dismissal of the suit or writ petition on its own merits either in the presence or in the absence of legal representatives/heirs of the deceased defendant/respondent are brought on record. It does not make any difference whether a suit or a writ petition is dismissed as abated or on merits in the presence or in the absence of the legal representatives/heirs of the deceased defendant/respondent. In such a situation, the appellant or the petitioner loses his right to bring the legal representatives/heirs of the deceased defendant/respondent on record and it becomes insignificant.

22. In the decision of the Madras High Court in the case of *Surya Narayan*, pointed out by the learned counsel Shri Gilda, the Trial Court passed a decree for recovery of money in favour of the plaintiff.

The defendant No.3 against whom a decree was passed, preferred an appeal. The Appellate Court heard the matter on 29-9-1925 and pronounced the judgment on 12-10-1925, but prior to hearing of the appeal, the plaintiff had died. This fact was not known to the counsels appearing for the parties. The hearing of the appeal proceeded and the decree passed by the Trial Court was confirmed by dismissing the appeal on merits. The defendant No.3, therefore, preferred a second appeal before the High Court.

23. In *Surya Narayan's* case, the Madras High Court considered the question whether a party, who was alive and who was heard, was entitled to claim a re-hearing of the appeal, because the opposite party was dead at the time when the legal representative of the deceased does not claim any such re-hearing. The Court rejected the contention that once a party really interested in the subject-matter of the appeal died, the whole proceedings should be kept in suspense and it is only after the legal representatives are brought on record that the litigation regains life and is ready for adjudication by the Courts. I fully agree with this view expressed by the Madras High Court. It has, therefore, to be held that in such a situation, the petitioner, who was heard on merits and suffered an adverse decision, cannot claim re-hearing of

the writ petition. Re-hearing can only be at the instance of the legal representatives/heirs of the deceased defendant(s)/respondent(s), if they are condemned unheard. The question No.2 is answered by holding that the application of review in such a situation is not tenable at the instance of the original petitioner and there was no need to bring the legal representatives/heirs of the deceased-respondent on record.

24. Before parting with the judgment, I must appreciate the valuable assistance provided by the learned counsel Shri Anup Gilda in this matter. He has taken good efforts to take out the judgments, which are relied upon.

25. For the reasons stated above, it is held that this Court was competent to decide Writ Petition No.4178 of 2000 on its own merits in the absence of the legal representatives/heirs of the deceased non-applicant/respondent on record and the judgment rendered therein against the applicant/petitioner cannot be reviewed on this ground.

26. No other point is raised.

27. The Misc. Civil Application for review is dismissed. No costs.

JUDGE.

Lanjewar