

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.176 OF 2015
IN
SUIT NO.447 OF 2013**

Sahir Siraj Hamid & Ors.Applicant/Org. Def. Nos.1 to 3

IN THE MATTER BETWEEN :

Laxmandas T. GurnaniPlaintiff

Vs.

Sakina Siraj Hamid & Ors.Defendants

Ms. Sonali Salaskar i/b. Lexim Associates for the plaintiff.

Mr. Rakesh K. Singh for the defendant nos.1 to 3/applicant.

Mr. Mustafa Kachwala for the defendant nos.4 & 5.

CORAM : K.R.SHRIRAM, J.

DATE : 21st DECEMBER, 2016

P.C.

1 This notice of motion is to set aside the order dated 9th April, 2014 passed by the Prothonotary and Senior Master and to allow the defendant nos.1,2 and 3 to file written statement in the interest of justice. This notice of motion has been taken out on 20th November, 2014.

2 Have considered the affidavit in support. It is also stated by the counsel for the defendant nos.1 to 3 that defendant no.1 has expired on 30th October, 2015 and defendant nos.2 and 3 are the only legal heirs of defendant no.1.

3 In view of the above, the plaintiff is granted leave to amend the plaint to delete the name of defendant no.1. The amendment to be carried out and copy of the amended plaint to be served within two weeks from today.

4 The statement of the counsel for the defendant nos.2 to 3 that he will forward a copy of the death certificate and affidavit of defendant nos.2 and 3 confirming that they are the only legal heirs of defendant no.1 upon the plaintiff within one week from today is accepted.

5 The order dated 9th April, 2014 is set aside. The defendant nos.2 and 3 to file their written statement and serve a copy thereof within three weeks from today.

 It is made clear that if the written statement is not filed within three weeks period, the suit will proceed as an undefended suit against defendant nos.2 and 3.

6 The notice of motion accordingly stands disposed.

7 Stand over to 20th January, 2017 for directions.

(K.R. SHRIRAM, J.)