

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.622 OF 2016
(Chainmal Pannalal Kothari, dead, through LR's and others Vs The
United Electro Diesel owner and another)

Mr.L.D.Vakil, Advocate for the petitioners.
Mr.A.D.Kasliwal, Advocate for respondent No.2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 13/06/2017

PER COURT :

1. The petitioner is aggrieved by the impugned order dated 11/09/2015 passed by the Trial Court by which Application Exh.188 in Rent Suit No.2/2007 praying for bringing the LR's of the deceased defendant No.1 on record, has been rejected.

2. I have considered the extensive submissions canvassed by the learned Advocates for the respective sides.

3. Though several peculiar facts in this matter have been canvassed before this court, it is undisputed that defendant No.1 in the suit is the partnership firm which is a legal entity and which is represented by either of the partners in the said partnership firm. The copy of the amended plaint is placed on record which clearly

indicates that defendant No.1 states the title of the partnership firm and its address and defendant no.2 is the partner who is defending the partnership firm in the said suit.

4. One of the partners of the firm namely Vasudeo Vishwanath Jadhav has passed away. The amended plaint indicates the name of the said deceased partner in the cause title. Defendant No.2 has appeared in the matter contending that defendant No.1 shown to be through the deceased proprietor Vasudeo, was in fact converted into a partnership firm before the institution of the suit. With these contentions, defendant No.2 who was already a party to the suit, has canvassed that he is the partner representing defendant No.1 / partnership firm.

5. Order 22 Rule 10-A (Bombay Amendment) of the CPC mandates that the pleader of a party has to indicate the demise of the said party. Defendant No.2, till this date, has not placed on record before the Trial Court a *purshis* under Order 22 Rule 10-A to indicate that one of the partners Vasudeo has passed away. Defendant No.2 in cross examination has stated that the partner Vasudeo has passed away.

6. Based on the above information, the petitioner has moved an application Exh.167 praying for impleading Shailesh s/o deceased Vasudeo. Notice has been issued by the Trial Court to the proposed defendant on 19/12/2014. It is admitted that the notice was served on Shailesh and no appearance has been entered by him in the pending suit. As such, the application Exh.167 in fact went unchallenged. However, the Trial Court has disposed of the said application on 13/02/2015 for the reason that the date of demise of Vasudeo was not mentioned by the petitioner though the Trial Court had directed him to mention the date vide its order dated 11/02/2014.

7. The peculiar facts narrated above have further led to a curious turn in this matter when the petitioner, instead of mentioning the date of demise of Vasudeo, proceeded to advance final arguments after tendering an evidence closing *purshis* on 17/01/2015. Then an application Exh.188 is filed on 17/06/2015 when the rent suit was pending final judgment. Consequentially, by the impugned order dated 11/09/2015, the application has been rejected by the Trial Court concluding that the suit has abated as against Vasudeo.

8. In these facts recorded as above, learned Advocate for the

petitioner submits on instructions that considering the contentions of defendant No.2 that he is a partner in defendant No.1/partnership firm and the said partnership firm has been paying rent to the petitioner and is the tenant in the rented premises, the petitioner desires to withdraw this petition and proceed on the defence taken by defendant No.2.

9. Considering the above, this petition is disposed of as withdrawn.

10. Needles to state, the Trial Court shall decide the said rent suit on the basis of the pleadings of the parties and the contention of defendant No.2 that he is a partner representing a partnership firm and which has occupied the rented premises.

(Ravindra V.Ghuge, J.)