

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO. 8890 OF 2017**

Smt. Anupama Vijayanand Malvankar & Anr.

..Petitioners

Vs.

M/s Tejukaya Reality & Anr

..Respondents

Mr. A. S. Kapse for the Petitioners

CORAM : R. M. SAVANT, J.

DATE : 30th MARCH, 2017

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 28-2-2017 passed by the Learned Judge of the Small Causes Court by which order the application Exhibit 11 filed by the Plaintiffs i.e. the Respondent No.1 herein came to be allowed and resultantly the heirs of the original deceased Defendant were allowed to be brought on record.

2 The Suit in question has been filed by the Respondent No.1 herein against one Mr. S. A. Malvankar who was the tenant in respect of the suit premises, seeking his eviction on the grounds mentioned in the said Suit. It seems that the summons in the said Suit was sought to be served on the Defendant tenant at the address mentioned in the cause title of the said suit. However, the said summons was returned unserved on the ground that the

room was found locked. Since the Plaintiffs were found that the seldom visited the suit premises, the Plaintiffs applied for substituted service being effected on the Defendant. The Defendant was accordingly served by substituted service in the said Suit. The heirs of the Defendant filed an application Exhibit 10 stating that the original Defendant had expired on 21-11-1989 and that they are his heirs. It was the case of the Plaintiffs that only after Exhibit 10 came to be filed by the heirs of the original Defendant that they became aware of the death of the original Defendant and have therefore filed the instant application Exhibit 11 to bring the heirs of the original Defendant on record. The said application has been allowed by the Trial Court on the ground that the heirs of the original Defendant have not placed any material on record to indicate that the Plaintiffs were aware of the death of the Defendant and inspite of the same had filed a Suit against a dead person.

3 The Trial Court observed that the case of the Plaintiffs that they became aware of the death of the Defendant on account of Exhibit 10 was plausible and therefore allowed the application Exhibit 11 for bringing the heirs of the original Defendant on record.

4 In my view, in the absence of the knowledge of the death of the Defendant being attributed to the Plaintiffs which knowledge has to be prior to the filing of the Suit, the course of action adopted by the Plaintiffs and allowed

by the Trial Court cannot be found fault with. Hence no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]