

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 6509 OF 2002

Nasir Khan Fazal Khan	... Petitioner
Vs.	
Pandurang Maruti Salunkhe & Ors.	... Respondents

CIVIL APPLICATION No. 1435 OF 2017
IN
WRIT PETITION No. 6509 OF 2002

Pandurang Maruti Salunkhe (Decd.) through LR Anil Pandurang Salunkhe	... Applicant
VS.	
Nasir Khan Fazal Khan & Ors.	... Respondents

CIVIL APPLICATION No. 1436 OF 2017
IN
WRIT PETITION No. 6509 OF 2002

Madan Sadashiv Balkawade	... Applicant
in the matter between	
Nasir Khan Fazal Khan	... Petitioner
Vs.	
Pandurang Maruti Salunkhe & Ors.	... Respondents

Mr. Saeed Akhtar a/w. Mr. Hitesh A. Thorat, Mohd. Rehan Ansari, Ms. Pradnya B. Meshram, Advocate for the petitioner.
Mr. S.S. Kanetkar, Advocate for the applicants in CAW/1435/2017 and 1436/2017 and for respondent no. 1.
Ms. Jyoti P. Jadhav, AGP for respondent nos. 2 to 4.
Mr. A.N. Mulla, Advocate for respondent no. 5.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **20th July, 2017.**

P.C.:

The reply given in Civil Application No. 1435 of 2017 and 1436

of 2017 is taken on record. Learned APP is allowed to file affidavit-in- reply. Registry to accept it.

2. During the course of arguments on Civil Applications No. 1435 of 2017 and 1436 of 2017 for bringing the applicants in place of respondent No.1 /plaintiff, it is found that the sole plaintiff Pandurang Maruti Salunkhe has expired on 27th May, 2008. In this Writ Petition, the order dated 1st November, 1996 below Exhibit 262 is challenged. By order dated 4th December, 2002 this Court has granted interim injunction in terms of prayer clause (d) and so the Suit No. 1 of 1982 was stayed. Rule was granted in the Petition by order dated 3rd June, 2003. The Petition is old and so also the suit is. In 2008, the sole plaintiff Pandurang Maruti Salunkhe died and no steps were taken within the stipulated period, hence, as on today, the Suit is abated, hence the Petition does not survive.

3. It is submitted by the learned counsel for respondent no.1/applicant that the suit was filed on representative capacity and therefore, the applicants have filed two Applications before the trial Court in the month of July and September, 2016 respectively and they are pending.

4. The learned counsel for respondent No. 5 submitted that though the suit abates, the Petition should survive.
5. There is no substance in the submission of learned counsel for respondent No. 5.
6. The trial Court obviously could not decide those Applications in view of the stay granted by this Court. However, as on today, in view of abatement, the Petition does not survive, therefore, the order of stay does not survive.
7. Writ Petition is disposed of.
8. In view of disposal of Writ Petition, Civil Applications do not survive and same are disposed of accordingly.
9. The Applications which are pending before the trial Court may be decided by the trial Judge. Copy of those Applications are to be served afresh on the defendants.
10. Registrar (Judicial) is requested to send R & P to the Thane Court through messenger.

(MRIDULA BHATKAR, J.)