

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12327 OF 2017
(Vikas s/o Suresh Lohiya (Agrawal) Vs. The State of Maharashtra and others)

Mr.P.N.Kalani, Advocate for the petitioner.
Mr.S.R.Yadav, AGP for respondent Nos. 1 and 2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 15/06/2018

PER COURT :

1. After this matter was heard on the earlier occasion, this Court has passed orders on 20/12/2017 and 31/01/2018. Despite service of court service, respondent No.3 has not appeared in the matter.

2. The application filed by the petitioner, claiming to be the legal heir of deceased Motilal / original plaintiff No.1, dated 03/05/2017 under Order XXII Rule 30 r/w Rule 50 of the Code of Civil Procedure, seeking leave to be impleaded as plaintiff No.1 in place of the deceased Motilal, has been rejected by the impugned order.

3. I have considered the reasons assigned by the Appellate Court while rejecting the application Exh.87 vide the impugned order dated 08/08/2017. It is apparent that neither the will deed was proved nor

the petitioner had an heirship certificate when exhibit 87 was decided. It is stated that now the will deed executed by deceased Motilal in favour of this petitioner has been proved in another proceeding and he is also equipped with an heirship certificate.

4. In these changed circumstances, the petitioner desires that the Appellate Court could exercise its powers under Order XXII Rule 5 of the CPC and permit the petitioner to step into the shoes of Motilal.

5. Considering the above, this petition is disposed of with liberty to the petitioner to file an application before the Appellate Court for the reasons recorded above, in view of the subsequent developments. The impugned order, therefore, would not be an impediment for the Appellate Court to decide the application proposed to be filed, on its own merits.

(Ravindra V.Ghuge, J.)