

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 174 OF 2017

KADUBA BAPU SAPKAL DIED THROUGH L.RS. MACHINDRA KADUBA
SAPKAL AND OTHERS

VERSUS

SMT. RIZWANA NUSRAT BEGUM DR. ATIK AHMED AND OTHERS

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Advocate for the Petitioners : Shri Tungar Hrishikesh V.

Advocate for Respondent 1 : Shri Pathan Yunus Basheer.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd July, 2018

Per Court:

1 The Petitioners, who are the legal heirs of the deceased Rustam Kaduba Sapkal, are aggrieved by the order dated 19.08.2017 passed by the Chairman, Maharashtra State Wakf Tribunal, Aurangabad in Wakf Suit No.69/2013 by which, the application Exhibit 25 has been allowed and Respondent No.1/ original Plaintiff is permitted to add the legal heirs of the deceased Rustam in the said suit. The application Exhibit-24 filed by the Petitioners/ Defendants for dismissing the suit as abated, has been rejected.

2 I have heard the learned Advocates for the respective sides for quite sometime. Considering the order that I intend to pass on the basis of the statement made by the learned Advocate for Respondent No.1/

Plaintiff, I am not required to advert to the entire submissions of the learned Advocates.

3 Suffice it to say that Respondent No.1/ Plaintiff had preferred the Wakf Suit by impleading Rustam Kaduba Sapkal as Defendant No.4. Rustam had passed away prior to the institution of the suit. After notices were issued, it was revealed in 2013 on the basis of the bailiff report that Rustam had already passed away. Therefore, the Plaintiff moved an application on 04.09.2014 seeking leave to add the legal heirs of the deceased Rustam.

4 I find from the application Exhibit 25 that there are no pleadings in the application as to what are the reliefs sought against Rustam, what were the circumstances due to which the Plaintiff did not gather knowledge that Rustam has passed away prior to the institution of the suit, whether, the prayers against Rustam would survive even against his legal heirs in the suit and after gathering the knowledge of the demise of Rustam in 2013, what were the circumstances due to which the Plaintiff could not file the application Exhibit 25 for more than a year. It is also revealed that the Advocate for the Plaintiff signed the application Exhibit-25. The Plaintiff has not signed the said application. It is informed that the Plaintiff has tendered a separate affidavit in support of Exhibit 25, though it is conceded that she has not signed Exhibit-25.

5 I find from the impugned order that the Tribunal has not

applied its mind to the Rule of Pleadings. When the application is drafted by an Advocate, the law of pleadings cannot be given a go-bye. So also, Order 24 of the Code of Civil Procedure may not cover Exhibit-25 in the form in which it has been filed.

6 The learned Advocate for Respondent No.1/ original Plaintiff submits that he would file a proper application for bringing the legal heirs of the deceased Rustam on record and such an application would contain proper pleadings, would be supported with a verification/ affidavit and shall be under the signature of the Plaintiff.

7 Considering the above, this Civil Revision Application is partly allowed. The impugned order dated 19.08.2017 to the extent of rejecting the application Exhibit 24 can not be termed as being perverse and erroneous. However, the impugned order to the extent of allowing Exhibit 25 is quashed and set aside and the application Exhibit-25 is disposed of with liberty to the Plaintiff to prefer a proper application.