

**IN THE HIGH COURT OF BOMBAY AT GOA**

**CIVIL REVISION APPLICATION NO. 41 OF 2014**

**SARITA S.K. PANJIKAR.**

... Applicant

Versus

**SHASHI G.K. PANJIKAR AND ANR.**

... Respondents

Shri Ashwin D. Bhobe, Advocate for the applicant.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 29th August 2018

ORAL ORDER :

1. None appeared on behalf of the respondents.
2. It was his contention that the right to sue did not survive in the legal representatives of the deceased respondent no.1 as wrongly held by the learned Appellate Court. In view thereof, the appeal being a continuance of the suit should be dismissed as abated and the decree set aside. In that context, he placed reliance in Syedna Taher Saifuddin Saheb v/s. State of Bombay (AIR 1958 SC 253] where it was held at paragraph 7 on principle that an action is personal to the person deceased and on his death the suit should abate. He further placed reliance in Musammat Hifsa Khatoon and others v/s. Mohammad Salimar Rahman and others [AIR 1959 PATNA 254] in the interpretation of the expression "survives" and "surviving" apart from the predicates of Order

XXII Rule 2 CPC and submitted that the learned District Judge was in error to hold that the right to sue survived and that the legal representatives had to be brought on record.

3. i have perused the impugned order under consideration and it is apparent therefrom that though the learned Judge did consider the judgment in Syedna Taher Saifuddin Saheb (supra), nonetheless on misinterpretation of the said judgment had held that it cannot be applied in the facts of the case at large before him and the legal representatives of the deceased had to be brought on record. It is apparent from the nature of the proceedings that the suit had been filed by the respondent no.1, since deceased, against the applicant for a decree of divorce on the grounds of adultery amongst others and which had been decreed in his favour. It is only during the pendency of the appeal before the learned District Judge that the respondent no.1 had expired and in that context the application moved on behalf of the applicant to seek leave to treat the suit as abated being a continuation of the appeal and as no right survived in the legal representatives. The learned Judge however on a misinterpretation of the ratio laid in Syedna Taher Saifuddin Saheb(supra) had held to the contrary. The action which was initiated by the respondent no.1, since deceased, against the applicant was a personal action and which could not be said to create any right in the legal representatives to continue the

proceedings. Moreover the appeal being a continuation of the suit, the learned District Judge ought to have allowed the application moved on behalf of the applicant. The impugned order thus was per se perverse, arbitrary and cannot be allowed to stand.

4. In view thereof, the revision application is allowed and the impugned order is quashed and set aside. It goes without saying that the suit will stand abated on the death of the respondent no.1/ plaintiff. Consequently, the impugned judgment and decree dated 18/01/2008 passed in the Matrimonial Civil Suit No.11/99/A is quashed and set aside.

5. The application according stands disposed off.

NUTAN D. SARDESSAI, J.

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