

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3053 OF 2018

Suseela Rajendra Pillai
And Ors.

...Petitioners

Versus

Ewart Investment Ltd.
And Ors.

...Respondents

....

Mr. Tushar Dahibawkar i/b. Dahibawkar & Co., for the Petitioners.
Mr. Jaydeep Deo, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 14th MARCH, 2018

P.C.

1. Heard Mr.Tushar Dahibawkar, learned counsel for the petitioners and Mr.Jaydeep Deo, learned counsel for the respondents, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 5.10.2017 passed by the learned Judge, Court Room No.9 of Small Causes Court at Mumbai below Exhibit-128 in R.A.E. & R. Suit No.186/312 of 2009. By that order, the learned trial Judge allowed the application made by the plaintiff for bringing on record the legal heirs and representatives of defendant No.10 who died on 10.11.2013.

3. It is not in dispute that defendant No.10 died on 10.11.2013. The intimation about the death of defendant No.10 and his legal heirs was given on 10.1.2014. The plaintiff came to know about defendant No.10's death on 14.2.2014 and filed application for bringing L.Rs. of defendant No.10 on record, which is allowed by the impugned order.

4. In support of this petition, Mr. Dahibawkar submitted that in the application Exhibit-128, the plaintiff did not pray for setting aside abatement. In view thereof, the trial Court was not justified in allowing the application.

5. On the other hand, Mr. Deo relied upon the decisions of Apex Court in **Mithailal Dalsangar Singh and others v. Annabai Devram Kini and others**, (2003) 10 SCC 691 and **Ram Dulari Sitla Prasad Tiwari and others v. Maniram Ram Prasad Tiwari**, 2005(1) Mh.L.J. 77 to contend that once a prayer for bringing legal heirs and representatives on record is made, the relief of setting aside abatement, though not prayed, is implied. In view thereof, I do not find that the learned trial Judge has committed any error in allowing the application Exhibit-128. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)