

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition (ST) NO. 23331 OF 2018

Shri. Rajmani Benimadhav Malviya
(since deceased) through his
heirs and Representatives

1. Shri Dashrat R. Malviya
and another.

...Petitioners

Versus

Smt. Ramdulari C. Mishra (deceased)
and others.

...Respondents

....

Mr. D.D. Singh, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 13th AUGUST, 2018

P.C.

1. Not on board. At the request of Mr.Singh taken up for admission.
2. Heard Mr.D.D. Singh, learned counsel for the petitioners, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'defendants', have challenged the orders dated 4.8.2018 passed by the learned Judge, Court Room No.34 of the Court of Small Causes at Mumbai (Bandra Branch) below Exhibits-176 and 178 in R.A.E. & R. Suit No.990/5881 of

1977. By order below Exhibit-176 the learned trial Judge rejected the application filed by defendants No.1 & 2 praying the Court to take steps as per order of this Court dated 2.8.2018 in W.P. (St.) No.17941/2018. By order below Exhibit-178, the learned trial Judge rejected the application of the defendants praying that till the steps according to the order of this Court dated 2.8.2018 are taken, the trial Court should not proceed further with cross-examination of DW-1.

4. Mr. Singh invited my attention to the order dated 2.8.2018 passed by this Court in Writ Petition (Stamp) No.17941/2018 (Exhibit-C, pages-37 & 38 of this Petition) as also the application dated 3.8.2018 at Exhibit-176 made in the trial Court. By that application, the petitioners who are defendants No.1 & 2 prayed that the Small Causes Court may be pleased to take steps as per the order dated 2.8.2018 passed in W.P. (St.) No.17941/2018.

5. By order dated 2.8.2018, Writ Petition (St.) No.17941/2018 was disposed of with observation that the learned trial Judge will satisfy about the service on defendants No.2(a) to 2(c) and will also find out whether they are accepting that they are the heirs and legal representatives of the original defendant – Rajmani Benimadhav, since deceased. If they indicate that they are not the heirs and legal

representatives of the original defendant – Rajmani Benimadhav, since deceased, the learned trial Judge will order their deletion from the proceedings.

6. A perusal of the application dated 3.8.2018 at Exhibit-176 made by defendants No.1 & 2 shows that the prayer made therein are not happily drafted. Defendants No.1 & 2 will have to file application praying for the reliefs in terms of paragraph-5 of the order dated 2.8.2018 and invite the trial Court's order on that application. Subject to this, no case is made out for entertaining this Petition at this stage and is accordingly disposed of.

7. All concerned parties, including the trial Court, to act upon the authenticated copy of this order. Order accordingly.

Pradipkumar
Prakashrao
Deshmane

Digitally signed
by Pradipkumar
Prakashrao
Deshmane
Date: 2018.08.13
18:28:00 +0500

(R. G. KETKAR, J.)

Deshmane (PS)