

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.4942 OF 2018

Darshan Kaur Ishar Singh (decd) through her  
LR Gurbachan Singh Ishar Singh ... Petitioner  
Vs.  
Rameshwarnath Vig (decd) through LRs and others ... Respondents

Mr. Vishal Kanade i/b. Mr. J. S. Saluja for Petitioner.  
Mr. Dharmesh Pandya a/w. Mr. Tejal Kurdukar i/b. Ashwin Pandya &  
Associates for Respondent No.8.

**CORAM : R. G. KETKAR, J.**  
**DATE : JUNE 25, 2018**

**P.C. :**

Heard Mr. Kanade, learned Counsel for the petitioner and  
Mr. Pandya, learned Counsel for the respondent No.8 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'defendants', have challenged the judgment and order dated 20.12.2014 below exhibit-71 in Appeal No.59 of 2006 as also the judgment and order dated 21.07.2016 in Review Petition No.9 of 2015 passed by the Appellate Bench of the Small Causes Court at Mumbai. By order dated 20.12.2014, the Appellate Court filed the application exhibit-71 filed by the defendant No.2 for remanding the appeal to the trial Court for determining whether or not Mrs. Akhila Madhok is the heir and legal representative of Gopal Das Madhok and / or the person who should be brought on record in place of the respondent No.7, since deceased) in the appeal. By order dated 21.07.2016, the Appellate Court rejected the Review Application filed by the defendants for reviewing the order dated 20.12.2014. While filing the application exhibit-71, the Appellate Court observed that

“whether any enquiry is necessary as to legal heir and legal representative of the respondent No.7 or not or whether the proposed respondent No.7(a) namely Mrs. Akhila Madhok is the legal heir and legal representative of the respondent No.7 or can be added as a respondent No.7(a) in place of respondent No.7 can be seen while deciding the application exhibit-33 and not by this separate application.”

3. While rejecting the Review Application, in paragraph 8, the Appellate Court observed that the issue involved in the application exhibit-71 is ordered to be determined along with the application exhibit-38. As a result, there is no prejudice or harm to the petitioner on filing of the application exhibit-71. Thus, the Appellate Court has made it clear that it has not rejected the application exhibit-71 and the same will be considered while deciding the application exhibit-38. In view thereof, I do not find that any case is made out for interfering with the impugned orders. Hence, Petition fails and the same is dismissed. The Appellate Court will decide application exhibit-38 along with application exhibit-71. As the Appeal is pending since 2006, the Appellate Court is requested to dispose of the appeal not later than 31.12.2018. Order accordingly.

**(R. G. KETKAR, J.)**

*Minal Parab*