

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

WRIT PETITION NO.11004 OF 2014

Mr.S.S.Kanetkar for the petitioner.
Mr.Shriram S.Kulkarni with R.S.Kulkarni for respondent No.1.

DATE : MARCH 22, 2019

Heard Mr.Kanetkar, learned counsel for the petitioner and Mr.Kulkarni, learned counsel for respondent No.1.

3. This petition has instituted by original defendant No.1 and not by the legal representatives of deceased defendant No.2 who have been ordered to be brought on record.

4. Mr.Kanetkar, learned counsel for the petitioner submits that the claim of the petitioner is basically against defendant No.1. However, in the suit, the director came to be impleaded as defendant. Defendant No.6 was joined as a director. Mr.Kanetkar submits that in any case, upon

demise of any director the right to sue does not even otherwise survive. He submits that the objections were not considered by learned trial Judge by the impugned order.

5. Mr.Kulkarni, learned counsel for the respondent defends the impugned order on the basis of reasoning reflected therein.

6. On perusal of the impugned order, it appears that the trial Judge has permitted the legal representatives of deceased defendant No.6 to be brought on record only because the said the legal representatives were brought on record in a pending writ petition arising out of the same suit. There is no discussion whether the right to sue survives in such circumstances or not.

7. Therefore, although the impugned order is not being interfered with, it is clarified that the defence of the said the legal representatives including the defence that right to sue does not survive because of demise defendant No.6 are expressly are expressly kept open to be decided in the suit. With the aforesaid clarification, this petition is disposed of.

8. There shall be no orders as to costs.

9. All contentions of the parties are expressly kept open.

10. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)