

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 7593 OF 2018

Madhvani Pvt. Ltd. .. Petitioner
Vs.
Taraben Laxmidasbhai Madhvani & Ors. .. Respondents

Mr. G. S. Godbole i/b Tapan R. Agrawal for the Petitioner.
Mr. K. J. Presswalla a/w. Mr. Sandeep goyal i/b M/s. Mulla & Mulla & CBC for Respondent Nos.6, 7 & 8.
Mr. O. Mohandas i/b M/s. Little & Co. for Respondent Nos.13 to 17.
Ms. Priyanka Kothari i/b M/s. Hooseini Doctor & Co. for Respondent Nos.2 to 5.

CORAM : PRADEEP NANDRAJOG, C.J.
DATE : 25th JULY, 2019.

P.C. :

1. The Petitioner has filed a suit for specific performance of an agreement to sale executed by Santokben Madhvani. When the suit was filed the lady having died, her husband and children were impleaded as Defendants, one of them being Rajendra Nanjibhai.
2. He filed a written statement but for reasons which I need not note, his defence was struck off. On the death of Rajendra Nanjibhai his legal heirs were brought on record and they filed written statement with an application praying that the order striking of the defence of their father be recalled and written statement be taken on record.
3. Vide impugned order dated 10.07.2018, noting that the defence of Defendant No.2 was struck off and that the legal heirs of Defendant

No.2 had been brought on record, the learned Trial Judge has noted that Order 22 Rule 4(2) of the Code of Civil Procedure permits a legal representative to make any defence appropriate to his character as legal representative of the deceased. Thus, the learned Trial Judge has held that the written statement filed by the legal heirs of deceased Defendant No.2 would be entitled to be taken on record.

4. As regards the issue whether the defence taken in the written statement is appropriate to their character as legal representatives, the learned Trial Judge has held that this issue can be examined once the written statement is taken on record. This means that the Petitioner can question such pleadings in the written statement which are not appropriate by way of defence in relation to the character as legal heirs of the deceased.

5. Clarifying as above, I find no merit in the Writ Petition. The same is dismissed.

[CHIEF JUSTICE]