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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8896 OF 2017**

Mrs. Mustari Begum Wd/o
Late Mr. Sayyed Mohammed Munnawar Petitioner.

V/s

Mrs. Akbari Begum Wd/o. Late Sayyed
Mohammed Munnawar and Anr. Respondents.

Mr. Rajesh Singh a/w Iftekhar Sayed for the Petitioner.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 17, 2019

P.C.:-

- 1] Heard the learned Counsel for the Petitioner.

- 2] It appears that Petitioner-Plaintiff has taken out an application for deletion of Defendant No.2 from array of Defendants. The said application came to be partly allowed, whereby it was directed that legal representative of Defendant No.2 viz. Mrs. Moimunnisa be brought on record.

- 3] The submissions are, if the aforesaid order is based on the

provisions of Rule 4-A of Order 22, there is no compliance of sub-rule (2) of Rule 4-A. According to the learned Counsel, before directing the Petitioner to implead the proposed Defendant, notice should have been ordered to the said proposed Defendant, so as to ascertain her interest in the cause sought to be espoused in the suit. The fact remains that such deletion which is sought by the Petitioner is based on the fact that Defendant No.2 has expired on 4/7/2015. In such an eventuality, if the Petitioner-Plaintiff has taken out proceedings for deletion of Defendant No.2, same could have been permitted at the risk and peril of the Petitioner-Plaintiff or if the legal representative of Defendant No.2 viz. Mrs. Moimunnisa was to be impleaded, which request was not moved by the Petitioner-Plaintiff, compliance should have been ordered in terms of Order 22 Rule 4-A sub-rule (2).

4] In the light of above, the order impugned dated 14/03/2017 is hereby quashed and set aside. The learned Civil Court is directed to decide the application afresh having regard to the provisions of Rule 4-A of Order 22.

(NITIN W. SAMBRE, J.)