

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6909/2017

(BEHARILAL DHANNARAM TRUST, NAGPUR & OTHERS **VERSUS** SHYAMSINGH GANGASAHAYA
 SHARMA (D) THR. LR's NAGPUR & ANOTHER)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri S.S. Sharma, counsel for petitioners.
 Shri S.L. Kotwal, counsel for R-1 & 2.

CORAM : A.S. CHANDURKAR, J.

DATE : APRIL 01, 2019.

RULE. Heard finally with the consent of learned counsel for the parties.

The petitioners who are the original plaintiffs are aggrieved by the order passed by the trial Court below Exhibit 13 thereby refusing to permit the plaintiffs to bring on record the legal heirs of the deceased defendant no.1.

According to the plaintiffs, in the suit for eviction filed by them, the defendant no.1 who was the tenant expired on 08.06.2016. On 20.07.2016 they had moved an application for bringing on record one Shri Sunil Sharma as the legal heir of defendant no.1. It was subsequently noticed that said Shri Sunil Sharma was not the legal heir of defendant no.1. As they got knowledge about the names of legal heirs of the defendant no.1, an application under provisions of Order I Rule 10 and Order XXII Rule 4 of the Code of Civil Procedure, 1908 (for short, 'the Code') came to be made. The application was opposed by the legal heirs on the ground that provisions of Order I Rule 10 of the Code could not be invoked. The trial Court partly allowed the application and permitted the deletion of the name of Shri Sunil Sharma. The other

prayer to bring on record names of the legal heirs was not granted. Hence, this writ petition.

After hearing the learned counsel for the parties, it is found that the application below Exhibit 13 was moved by invoking the provisions of Order XXII Rule 4 as well as Order I Rule 10 of the Code. While deletion of one of the names wrongly brought on record was sought, there was also a prayer to bring on record the legal heirs of deceased defendant no.1. The trial Court by observing that a separate application was required to be filed for addition of parties rejected the same. In the light of the fact that both the provisions had been invoked by the plaintiffs by filing a composite application, the entire application ought to have been allowed.

In that view of the matter, the order dated 07.09.2017 passed below Exhibit 13 to the extent the legal heirs of defendant no.1 have not been permitted to be brought on record is set aside. The said application below Exhibit 13 is allowed in terms of its prayer.

Rule is made absolute of in aforesaid terms. No costs.

JUDGE

APTE