

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.7633 OF 2020
IN
FIRST APPEAL NO.195 OF 2018

Eknath Chagan Shinde (Died)
Through L.Rs.

1-A) Parvatabai Eknath Shinde
and others.

..APPLICANTS

-VERSUS-

The Collector, Aurangabad
and others.

..RESPONDENTS

WITH
CIVIL APPLICATION NO.8064 OF 2020
IN
FIRST APPEAL NO.194 OF 2018

Balwanta Raoji Thorat (Died)
Through L.Rs.

1-A) Kachru Balwanta Thorat

..APPLICANT

-VERSUS-

The Executive Engineer,
N.M.C. Division, Vaijapur
and others.

..RESPONDENTS

...

Mr.A.M. Hajare, Advocate for applicants
Mr.A.A. Jagatkar, Advocate for the respondent-
State.

...

CORAM : V.L. ACHLIYA, J.
DATE : 10.02.2021

ORAL ORDER :

. The applicants have preferred these applications to bring their names on record as legal representatives of the deceased respondent no.1 in respective appeals by condoning the delay.

2. In brief, it is the contention of learned counsel for the applicants that they are the legal representatives of the deceased respondent no.1 in respective appeals preferred by the appellant - acquiring body. The Reference Court enhanced the compensation vide judgment and awards dated 27.10.2020 and 30.10.2020 passed in respective References made by the deceased respondent No.1. After period of more than six years of the judgment and awards passed by the Reference Court, the acquiring body preferred appeals challenging the said awards along with applications seeking condonation of delay. Pursuant to notice issued to respondent no.1 in said application, the bailiff

reported that the respondent no.1 in both the appeals had died on 16.01.2012 and 12.09.2011 respectively. He has also annexed the death certificates in respect of respondent no.1 in both the appeals. After receipt of reports, the appeals were listed before the Court on 03.10.2017. The Advocate representing the appellant – acquiring body sought time to bring legal representatives of the deceased respondents on record. In order to take steps to bring the legal representatives of the deceased on record, the appeals were adjourned and posted on 6th November, 2017. On 28th November, 2017, the applicants appeared and filed applications through their Advocate to bring their names on record as legal representatives of respondent no.1 in respective appeals, still the appellant has not taken any steps to bring legal representatives on record. However, the delay was condoned though the Respondent No.1 in respective appeals were dead. Even after delay was condoned and the appeals were registered, the appellant – acquiring body has not taken any steps to bring

legal representatives of the deceased Respondent no.1 on record. Appeals were placed before the Lok-Adalat held on 14.07.2018. The appellant – acquiring body withdrawn the appeals. Accordingly, the order as to disposal of appeals as withdrawn passed on 14.07.2018. It is submitted that the appellant have deposited the amount in terms of award passed by the Reference Court pursuant to the conditional order granting stay passed in both the appeals. In absence of their names brought on record as legal representatives of the deceased Respondent No.1, they are not entitled to withdraw the amount. In order to overcome the situation, they have preferred these applications.

3. Learned counsel for the applicants submits that based upon identical facts, this Court has entertained such applications and allowed the legal representatives of the deceased respondent to bring their names on record though the appeals were disposed of. In this context, learned counsel has referred the

order dated 14.06.2019 passed by this Court (Coram : Smt.Vibha Kankanwadi, J) in Civil Application No.6487/2019 filed in First Appeal No.198/2018 and the order dated 29.11.2019 passed by this Court (Coram : Mangesh S. Patil, J) in Civil Application No.4965/2019 filed in First appeal No.793/2018.

4. Since it was noticed that invariably the applications claiming similar reliefs are filed by the legal representatives of the deceased respondents in disposed of appeals and the applications are processed without scrutinizing the same, the Registrar (Judicial) was requested to examine the maintainability of such applications and suggest the remedial measures to overcome such situation.

5. Pursuant to the order dated 11.12.2020 passed by this Court, the Registrar (Judicial) has examined the record and proceedings of both the cases and submitted detailed report. The Registrar

(Judicial) has observed in report as under :-

"In this background, I submit with utmost respect that having considered ambit and scope of Order XXII of the Code of Civil Procedure, the present Civil Applications filed by the legal heirs to substitute them in place of original respondent by condoning the delay are beyond the scope and ambit of Order XXII of the Code of Civil Procedure. It is pertinent to note that as on today appeals are not pending. The appellants are not moving these applications to bring on record legal heirs by restoring the appeals to rectify the error on their part. These Civil Applications are by legal heirs of original respondents. Therefore, these Civil Applications even considered under Order 1 Rule 10 of Order XXII 10, the same are not tenable, as appeals are no more pending. It is open for legal heirs of the defendant or respondent to approach the Court to substitute them in place of their predecessor-in-title. However, this remedy is open when suit or appeal is pending.

I am further to state that it is also not a case to permit correction of errors under Section 21(1) proviso of the Limitation Act. It permits the substitution or adding new plaintiff or defendant during pendency of proceeding, where the Court is satisfied the omission to include a new plaintiff or defendant was due to a mistake made in good faith. This remedy is open to the plaintiff or appellant only, if they have impleaded any wrong person as a defendant or respondent in good faith.

To sum up, in view of aforesaid factual as well as legal position, the present Civil Applications are beyond the purview of Order 22 of the Code of Civil Procedure.

REMEDIAL MEASURES

The Hon'ble Lordship was pleased to direct the undersigned to state remedial measure to avoid such complication. I, first, express regretness for inconvenience caused to the Hon'ble Court. The undersigned has already issued directions to the concerned branch to

ascertain whether main appeal/petition is pending, whichever they receive application to bring on record legal heirs. However, the concerned Assistant Section Officer reported vide his report that due to oversight he did not check the maintainability of Civil Applications in the light of Order XXII of the Code of Civil Procedure. He has expressed apology (Flag-G). I further submit with utmost respect that I have again issued directions to all concern to take utmost care while examining the Civil Applications to bring on record legal heirs. I am further to state that henceforth utmost care will be taken even while placing the matter before the Lok Adalat and it will be ascertained whether parties are alive at the time of passing the Award as well as their free consent."

6. The enabling provisions contained in Order XXII Rule 4 and Rule 11 of the Code of Civil Procedure providing for bringing the legal representatives of the defendants or sole defendant in suit or the respondents or sole respondent in appeal reads as under :-

"Order XXII Rule 4 - Procedure in case of death of one of several defendants or of sole defendant-

(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5)Where-

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and
(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,

the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved."

Order XII Rule 11 - Application of Order to appeals-

In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal."

7. Thus, plain reading of above-quoted provisions spell out that the application to bring legal representatives of the deceased defendant or defendants in suit or respondent/respondents in appeal can be invoked during pendency of suit or appeal, as the case may be. There is no enabling

provision empowering the Courts to entertain such application after final decision in a suit or appeal, as the case may be. So also the exercise to bring the legal representatives of the deceased defendant or respondent necessarily to be undertaken by the plaintiff or the appellant in suit. In that view, the applications filed by the applicants to bring their names on record as legal representatives of the deceased respondent no.1 after final disposal of appeals can not be entertained. In that view, the applications filed by the applicants are misconceived and not maintainable in law.

8. In view of the facts emerged from the record of the present appeals and other cases came up for hearing, it is necessary to observe that for referring the case for consideration before the Lok-Adalat the existence of "dispute" between the parties is a *sine qua non*. In absence of any dispute between the parties, no case expected to be referred for consideration of Lok-Adalat.

If the plaintiff or appellant seeks withdrawal of the appeal then such matters cannot be processed and placed before the Lok-Adalat for passing the formal order of disposal of appeals as withdrawn.

9. In this context, it is useful to refer Section 20 of the Legal Services Authorities Act, 1987 which provides for cognizance of cases by Lok-Adalat. It necessarily requires existence of dispute between the parties which needs to be resolved through intervention of Panel members. Proviso to sub-section (1) and sub-section(2) of Section 20 expressly provide that no case shall be referred to Lok-Adalat for settlement except after giving reasonable opportunity of being heard to the other party. In that view, the cases in which no dispute exist between parties can not be referred for settlement before Lok-Adalat. Therefore, the practice of placing the matters before Lok-Adalat, where the parties are not served or reported to be dead is contrary to statutory provisions contained U/Sec. 20 of Legal

Services Authorities Act. It is also important to take note that in order to regulate the procedure for conduct and organizing the Lok-Adalats, the regulations have been framed. The National Legal Services Authority (Lok Adalats) Regulations, 2009 (hereinafter referred to as "The said Regulations") provides for procedure for organizing the Lok-Adalats. The regulation 5 of the said Regulations mandatorily provides notice to every party whose case is referred to Lok-Adalats to be given in advance so that the party concerned prepare himself to appear before the Lok-Adalat. The notice can be dispensed with if the order referring the case passed in presence of the parties to the proceedings. The procedure for hearing of the case necessarily requires the existence of certain dispute amongst the parties which needs to be resolved with the assistance of expert members of the Panel. The purpose of appointment of expert Panel is to facilitate the parties to arrive at just settlement. However, it is observed that the cases are processed and

placed before Lok-Adalat without following the procedure prescribed under the law. The cases in which the parties are not served or reported to be dead still processed and placed before the Lok-Adalats. So also the cases in which no dispute exists and required to be resolved through intervention of the Lok-Adalat are also placed before the Lok-Adalat. It will not be out of place to observe that the cases in which the acquiring body, insurance company as well as private individual seeks to withdraw the proceedings on account of out of Court settlement or policy decision of the Government or statutory body then such cases are not expected to be placed before Lok-Adalat just for the sake of disposal. It is also expected that valuable time of the expert members of the Panel be utilized for resolution of real dispute amongst the parties.

10. In view of the conclusion which I have reached that the applications filed are not maintainable, the applications are dismissed as

not maintainable.

11. Since the appeals are disposed of and the amount has been deposited in terms of the conditional order passed by this Court to stay the execution of Award under challenge in respective appeals, it is necessary to transfer the amount to the Reference Court to be treated as deposit made towards satisfaction of award passed by Reference Court in respective cases. Accordingly, the amount be transferred to concerned Court. The applicants are granted liberty to make appropriate applications before the Reference Court or Executing Court, as the case may be, for withdrawal of amount. In case such applications are made, the Reference Court or Executing Court, as the case may be, are directed to decide the same on its own merit. If the applicants satisfy the Court that they are legal representatives of the deceased claimants and entitled to receive the compensation amount then the appropriate orders be passed as to disbursal of amount.

12. The applications are disposed of with observations made as above.

[V.L. ACHLIYA]
JUDGE

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