

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11293 OF 2015**

Maruti Sreepat Danbe through his POA

Gajanan Maruti Danbe .. Petitioner

Versus

Sunanda Govind Mali & Ors. .. Respondents

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Mr.Aditya S. Desai for the Petitioner.

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CORAM: BHARATI DANGRE, J.

DATED : 15th NOVEMBER, 2021

P.C:-

1. The petition is filed by the petitioner being aggrieved by the order of review as well as the order passed on 28/01/2015 thereby refusing to entertain the application for bringing the legal heirs of defendant No.15 on record.

2. Heard the learned counsel for the petitioner and perused the proceedings. An application came to be filed before the learned Civil Judge, Junior Division, Islampur in Regular Civil Suit No.133 of 2005, seeking setting aside of abetment of defendant No.15 and for bringing his legal heirs on record. On the said application, the learned Judge passed the following order.

“This matter is 10 years old. Def.No.15 has not filed his W.S.. So considering this, necessity to bring LRs of def.No.15 may be dispensed with vide O 22 R 4(4) of C.P.C. and accordingly dispensed.”

This order was challenged in review, but the review also came to be rejected.

3. Sub-rule (4) of Rule 4 of Order 22 of the CPC reads as under :-

“(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 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.”

4. The suit is filed in the year 2005 and the learned Judge is perfectly justified in passing the impugned order where he observed that the suit is filed 10 years back and defendant No.15 has failed to file the written statement. In such circumstances, he was guided by sub-rule(4) of Rule 4 of Order 22 of the CPC. I see no legal infirmity in the said order and the apprehension expressed by the learned counsel for the petitioner that, it would pose difficulty while the decree is being executed, is also unfounded as the solution is offered in sub-rule (4) itself.

With the aforesaid observations, the writ petition is disposed of.

(SMT. BHARATI DANGRE, J.)