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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.282 OF 2022
IN WP/5828/2021**

**KASUBAI HARICHANDRA SONAWANE, DECEASED THR.
HER LEGAL HEIRS DHANRAJ HARICHANDRA SONWANE
AND ANOTHER
VERSUS
PRAMOD HARICHANDRA SONWANE AND ANOTHER**

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Mr S. V. Suryawanshi, Advocate for applicants;
Mr G. V. Wani, Advocate for respondent No.1
Smt. P. V. Diggikar, A.G.P. for respondent No.2

CORAM : SMT. BHARATI DANGRE, J.

DATE : 13th January, 2022

PER COURT:

1. The Civil Application is taken out in the writ petition by the heirs of respondent No.1 - Kasubai Harichandra Sonawane, who had instituted the proceedings under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the 2007 Act') solely against the petitioner in the petition, her son Pramod Harichandra Sonawane.

Smt. Kasubai passed away on 30/03/2021 and in fact on the date when the petition was filed, she was no longer alive to defend the present petition.

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By the present application, her two children Dhanraj and Bharati are seeking their substitution, in the petition on death of Kasubai.

2. The learned Counsel for the petitioners submit that this exercise is unnecessary since the relief under Section 5 of the 2007 Act is limited to the Applicant Kasubai, who had instituted the proceedings, claiming that she is the owner of house property C.T.S. No.106, which is a dwelling house and her son Pramod is not maintaining her and also not permitting her to sale the said property and this has constrained her to reside with her other son.

The petitioner was impleaded as a respondent No.1 in the said proceedings and the competent authority on 22/01/2021, passed an order directing the petitioner to vacate the premises with immediate effect. The petitioner preferred an appeal before the Collector Jalgaon, but it came to be turned down with observations that it is not maintainable. He, therefore, approached this Court by filing writ petition and by an order dated 05/04/2021, the effective operation of the impugned order came to be stayed subject to a stipulation that the petitioner shall pay maintenance @ Rs.5,000/- p.m. to respondent No.1 from the date

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of the application and the arrears of maintenance to be deposited within period of four weeks. The said order being passed on 05/04/2021 is of no consequences since respondent No.1 had already passed away on 31/03/2021.

3. The applicants, who are seeking their impleadment in the writ petition in place of Kasubai, in the capacity as her legal heirs, cannot take the proceedings in further, since relief sought under Section 5 is restricted to the maintenance and welfare of parents and senior citizens and since Kasubai claimed the said relief of maintenance from her son Pramod, on her death, the writ petition assailing the order of the Sub Divisional Officer/ competent authority, has been rendered infructuous.

As far as the claim of the petitioner in respect of possession over the house property, which Kasubai claimed in the application, the right of her other legal heirs in the said property can be agitated in the independent proceedings and disposal of the writ petition on the ground of death of respondent No.1 would not preclude her legal heirs for claiming any interest right and title in the house property bearing CTS No.106 Property No.938/3803, situated at mouje Pachora.

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With the aforesaid clarification, the petition has been rendered infructuous and therefore, is disposed of.

Needless to state, no orders are necessary on civil application.

(SMT. BHARATI DANGRE, J.)

sjk