

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.8480 OF 2013**

SURYEKANT MARUTI KOKATE THROUGH LRS PUSHPAMALA
SURYEKANT KOKATE AND OTHERS ..PETITIONERS

VERSUS

LAXMIKANT RAMCHANDRA THOMBRE ..RESPONDENT

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Mr. Sujit Patil h/f Mr. V. D. Salunke, Advocate for
the Petitioners.

Mr. S. g. Chapalgaonkar, Advocate for sole
Respondent.

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CORAM : S. V. GANGAPURWALA, J.
DATED : 14th JANUARY, 2022.

PER COURT:-

1. The respondent is original plaintiff. The application Exhibit-5 before the Trial Court in Regular Civil Suit No.154/2007 filed by plaintiff is allowed and defendants are clamped with injunction on 01.04.2008. The defendant no.1 it appears died in the year 2010 and defendant no.4 died in the year 2009. The legal heirs it appears are brought on record of defendant nos.1 and 4 with the permission of the Court.

2. The plaintiff claimed disobedience of the order of injunction. As such, filed application under Order 39 Rule 2-A of the Code of Civil Procedure. However, in the application deceased defendant nos.1 and 4 were arrayed. The plaintiff filed application for adding names of the legal heirs of deceased defendant nos.1 and 4 by filing application for amendment Exhibit-15 in

Miscellaneous Application No.30/2013 filed by the plaintiff under Order 39 Rule 2-A of the C.P.C. The said application is allowed. Aggrieved thereby, the present petition.

3. The learned counsel for petitioners submits that, if the breach is committed by defendants, then the legal heirs cannot be made liable for the disobedience committed by the deceased defendants. The learned counsel relies on the order passed by the learned Single Judge of the Calcutta High Court dated 28.08.2012 in C.O. No.2382/2012.

4. The learned counsel further submits that, legal heirs of defendant no.1 were not brought on record. He died in the year 2010. When penal action is being sought to be taken, the legal heirs cannot be made liable. In view of that, the order impugned is erroneous and does not stand to reason.

5. Mr. Chapalgaonkar, learned counsel for respondent submits that, legal heirs of deceased defendant nos.1 and 4 were brought on record in the Suit. The disobedience alleged is of the year 2012. To be more precise, the disobedience alleged is of incident dated 20.12.2012 (page no.30, paragraph no.7). Because of inadvertent typographical error, the names of legal heirs were not typed in the application and the names as per original plaint and not amended plaint were typed.

6. I have considered the submissions canvassed by the learned counsel for respective parties.

7. It appears from the certified copies on record that, legal heirs of defendant no.1 SuryEkant were brought on record with the leave of the Court dated 20.07.2010 and legal heirs of defendant no.4 were brought on record as per the leave of the Court dated 18.06.2009. The plaintiff contends disobedience of the order of injunction for incident of 20.12.2012. On the said date, defendant nos.1 and 4 were dead and their legal heirs were already brought on record in the plaint. It appears to be a case of a typographical error which has been rightly considered by the Trial Court.

8. However, at this stage, merits of the contentions may not be gone into. It would be open for petitioners to controvert the claim of the plaintiff, so also it will be open for them to take all the defences available to them, so also not being liable for alleged disobedience and that there is no disobedience on their part.

9. Writ Petition is disposed of. No costs.

(S. V. GANGAPURWALA)
JUDGE

Devendra/January-2022