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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 924 OF 2022**

The State of Maharashtra and Ors. ...Petitioners

Versus

Mrs. Surekha Dattatraya Muluk ...Respondents

Mr. B.V. Samant, AGP, for the petitioners/State.

Mr. Ajit Ram Pitale, for the respondents.

**CORAM : DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

DATE : SEPTEMBER 21, 2022

P.C. :

1. The original respondent in the writ petition having passed away, her mother has been substituted as respondent. It is not disputed by the substituted respondent that apart from Rs.7,49,100/- (Seven lakh forty-nine thousand one hundred only), all other payments have been released by the petitioners.
2. In regard to release of Rs.7,49,100/- in favour of the substituted respondent, the department feels inhibited by the provisions contained in sections 15 and 16 of the Hindu Succession Act, 1956.
3. It is not in dispute that within few minutes of death of the original respondent, her son died by suicide. The original respondent's husband predeceased her. The substituted respondent, being the mother of the original respondent is certainly her heir and can claim the property of the original respondent. However, the property of the original respondent

who has died intestate shall devolve, in the present facts and circumstances of the case, firstly, upon the heirs of the husband and if there are no such heirs, on the substituted respondent.

4. There is no worthy material on the basis of which we can conclude that the predeceased husband of the original respondent did not leave behind him any surviving heir. In such view of the matter, we feel that the difficulty of the department is genuine and it may not be proper to direct the petitioners to release the sum of Rs.7,49,100/- to the substituted respondent. Interest of justice, in our view, would be sufficiently served if this writ petition is disposed of granting liberty to the substituted respondent to apply for succession certificate before the competent Court under section 372 of the Indian Succession Act, 1925 and if such succession certificate be placed before the petitioners, they shall be under a duty to act in terms thereof and release the amount due and payable to the substituted respondent within two (2) weeks of such production. It is ordered accordingly.

5. Since the original respondent has passed away during the pendency of the writ petition for which we have been disabled to decide the claims raised by the petitioners on its merits, the order impugned as well as orders passed on this writ petition shall not be treated as precedents.

6. No costs.

(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)