

K.S. Jadhav

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 307 OF 2018

WITH

INTERIM APPLICATION NO. 19821 OF 2022

IN

FIRST APPEAL NO. 307 OF 2018

WITH

CIVIL APPLICATION IN FA NO. 852 OF 2018

IN

FIRST APPEAL NO.307 OF 2018

Garware Club House

...Applicant/
Appellant

In the matter of :

Garware Club House

...Appellant/
Org. Defendant
No.1

Versus

- | | |
|--|------------------|
| 1. Jagdish Maneklal Mehta (since deceased) | ...Respondents / |
| 2. Vatsal Jagdish Mehta | Org. Plaintiffs |
| 3. Palak Jagdish Mehta | |
| 4. Dharmesh Morarji Chemicals Ltd. | |
| 5. DMCC Sports Club | |
| 6. Mumbai Cricket Association | |

And

- 2A. Hema Jagdish Mehta
2B. Falguni Vatsal Mehta

...Proposed
Respondents

Ms. Sonali Aggarwal i/b M/s Dhruve Liladhar & Co., Advocate
for Applicant/Original Appellant.

None for Respondents.

CORAM : R.I. CHAGLA, J.

DATE : 21st November, 2022.

ORDER :

1. Heard the learned Advocate appearing for the Applicant/Original Appellant. None appears for the Respondents though they have been served by the Appellant's Advocate's Notice dated 5th September, 2022 and on which they have acknowledged service. The Notice dated 5th September, 2022 is taken on record and marked 'X' for identification.

2. By this Interim Application, the Applicant/Appellant is seeking the deletion of the name of Respondent No.2 who has expired on 27th February, 2022 and for bringing the legal heirs of Respondent No.2 on record in his place and stead being proposed Respondent Nos. 2A & 2B in the Appeal and Civil Application No.852 of 2018. Accordingly, amendment has been

sought in terms of the Schedule annexed at Exhibit-C to the Interim Application.

3. The Applicant has stated that the present application is under the provision of Order XXII Rule 4 of the Code of Civil Procedure, 1908 for bringing the legal heirs of Respondent No.2 in his place in the Appeal. The first appeal has been filed against the Judgment and Decree dated 9th February, 2017 passed by the Trial Court / City Civil Court.

4. The Applicant has stated that the learned Advocate for Respondents by letter dated 6th May, 2022 informed the Advocate for the Appellant that Respondent No.2 has expired on 27th February, 2022 and forwarded the names of the legal heirs of Respondent No.2. The Respondent's Advocate's letter dated 6th May, 2022 is annexed at Exhibit-A to the Interim Application. The Death Certificate dated 4th April, 2022 was also forwarded to the Advocate for the Appellant by the said letter.

5. The Applicant has stated that on 29th July, 2022, the first Appeal was listed before this Court. However, in view of the

death of Respondent No.1 during the pendency of the suit and thereafter death of Respondent No.2, this Court by the order dated 29th July, 2022 directed the Applicant to delete the name of Respondent No.1 from the cause title of the Appeal and also directed the Applicants to take steps for bringing the legal heirs of the Respondent No.2 on record. Accordingly, the present Interim Application has been taken out.

6. I have considered the averments in the application as well as noted that the Respondent No.2 has expired on 27th February, 2022 which was informed to the Appellant by the Respondent's Advocate's letter dated 6th May, 2022. Thereafter, this Court has directed the Applicants by order dated 29th July, 2022 to take steps for filing the present Interim Application for bringing the legal heirs of Respondent No.2 on record. Thus, a case is been made out for grant of the relief sought for in Interim Application. This particularly considering that Respondent No.2A & 2B are the legal heirs of deceased Respondent No.2 who are required to be brought on record. Hence, following order is

passed :

- i) The delay in filing the Interim Application, is condoned.
- ii) The Appellant is permitted to delete the name of Respondent No.2 and to bring the Respondent Nos.2A & 2B, legal heirs of Respondent No.2 on record in place of Respondent No.2 in the Appeal and Civil Application No.852 of 2018.
- iii) The amendment shall be carried out within a period of two weeks from the date of this order.
- iv) The Interim Application is accordingly disposed of.

[R.I. CHAGLA, J.]