

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 14430 OF 2018

M/s.Raj Steel and Tubes

...Petitioner

vs.

Mrs.Sangita Sanjay Dhongade & Ors.

...Respondents

Mr.Prathamesh B. Bhargude for Petitioner.

None for Respondents.

CORAM : ROHIT B. DEO, J.

DATED : 1 JULY 2022

P.C. :

1. None appears on behalf of the Respondents. Heard Mr. Bhargude, learned Counsel for the Petitioner.

2. The Petitioner is the plaintiff in Regular Civil Suit 52/2017 who is assailing the order dated 4 September 2018 rendered by the 14th Joint Civil Judge, Senior Division, Pune, whereby the defendants in the suit are granted unconditional leave to defend the summary suit.

3. The controversy lies in narrow compass.

4. It is not in dispute that the suit is predicated on certain amount due and payable by Mr.Sanjay, who was the proprietor of M/s. Sanjay Dhongade & Associates. Mr.Sanjay expired and the suit is instituted against his wife and children on the premise that as legal heirs, they are liable to pay the debts of Mr.Sanjay.

5. The learned trial Judge granted unconditional leave observing that the defence of the legal heirs that they are not liable to pay any amount to the plaintiff though they are legal heirs of deceased Sanjay, is bonafide and raises a legal question which will have to be addressed during the trial.

6. It is well settled that while a suit is maintainable against legal heirs, even at the stage of execution the legal heirs shall be entitled to show that they have not inherited any property or estate from the original debtor. However, while the learned trial Judge does note the submission of the learned Counsel for the defendants that nothing is inherited, such assertion is conspicuously lacking in the affidavit in support of the application for leave to defend. In this view of the matter, the observation of the learned trial Judge that since the defendants are legal heirs, *ipso facto* triable issue arises, is not quite appropriate.

7. I am not inclined to make any positive observation lest any prejudice is caused. I consider it appropriate to set aside the order impugned and remit the matter to the learned trial Judge for fresh decision on the application for grant of leave to defend.

8. In the facts of the case, I further deem it appropriate to permit the parties to place on record additional material in support or in opposition of the application for grant of leave to defend.

9. The order impugned is set aside and the matter is remitted in the aforestated terms.

10. The petition is disposed of.
11. The learned trial Judge is requested to expedite the suit.

(ROHIT B. DEO, J.)