

SGPunde

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 1038 OF 2023
IN
CIVIL APPLICATION NO. 9305 OF 2021
IN
CIVIL REVISION APPLICATION NO. 601 OF 2003

Dr. Ravindra Shivchandra Zawar & Ors. ... Applicants
Versus
M/s. Maharashtra Hospitality Pvt. Ltd &
Others ... Respondents

...
Mr. Subodh P. Shah – Advocate for applicants
Mrs. Charuta S. Deshmukh – Advocate for respondent no.4
....

CORAM : GAURI GODSE, J.
DATE : 07th FEBRUARY, 2023

PER COURT :

1. This civil application is filed for seeking exemption from substituting the legal representatives of the deceased/respondent no. 3 as provided under Order XXII Rule 4(4) of the Code of Civil Procedure, 1908 ['CPC']. It is the case of the applicants that the suit proceeded exparte against respondent no. 3, who was defendant no. 2 in the suit. Hence, it is submitted that, as provided under Order XXII Rule 4(4) of CPC, the applicants can

be exempted from bringing on record the heirs and legal representatives of deceased/respondent no. 3 and the Civil Revision Application can proceed without substituting the heirs and legal representatives of respondent no. 3. In support of his submission, the learned counsel for the applicants relied upon the decision of the Hon'ble Supreme Court in the case of Mata Prasad Mathur (Dead) by LRs Versus Jwala Prasad Mathur and others¹. He submits that, in view of the law laid down by the Hon'ble Supreme Court as well as by plain reading of the aforesaid provision, the present application may be allowed.

2. Learned counsel for the applicant is right in submitting that the respondent no. 3, who was defendant no. 2 in the suit, never appeared in the suit and the suit proceeded ex parte against respondent no. 3. Hence, in view of the same, the application is allowed in terms of prayer clause 'A', which reads as under :

'A' - The Hon'ble High Court may be pleased to exempt the applicants from substituting the legal representatives of the Respondent No.3 Dr. Karanjgaonkar as provided under Order XXI, Rule 4(4).

1 (2013) 14 SCC 722

3. Hence, Civil Application No. 9305 of 2021 to proceed without substitution of the legal representatives of respondent no. 3.
4. Learned counsel for the applicant seeks time to take steps against the unserved respondent no.2, in the Civil Application No. 9305 of 2021.
5. Four weeks time is granted to take steps in respect of respondent no. 2.
6. Stand over to 08th March, 2023.

[GAURI GODSE]
JUDGE