

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1457 OF 2023

**MEENABAI EKNATH AVHAD AND ANOTHER
VERSUS
THE COLLECTOR AND OTHERS**

....
Mr. Sanket S. Kulkarni, Advocate for the petitioners
Mr. S.N. Morampalle, AGP for the respondent – State
...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 08-02-2023

PER COURT :

. Heard.

2. The petition takes an exception to the order dated 20.01.2023 whereby the petitioners' applications for being brought on record as the legal heirs of the deceased respondent – plaintiff came to be rejected. The Appellate Court rejected the applications filed by the daughter of deceased – plaintiff and daughter of the predeceased son of the plaintiff on the ground that there is no enabling provision to allow third party to be impleaded as party respondent in the Misc. Civil Appeal.

3. The daughter of deceased plaintiff and daughter of the predeceased son of the plaintiff filed applications stating that the plaintiff is expired and since the daughter of deceased plaintiff and

daughter of the predeceased son of the plaintiff are the legal heirs, they are required to be brought on record. In the proceeding, the Appellate Authority has brought on record the wife and son of the predeceased son of the plaintiff, but has not brought on record the daughter of deceased plaintiff and daughter of the predeceased son of the plaintiff. The provisions of Order-XXII, Rule-11 of the Code of Civil Procedure (in short, hereinafter referred to as the 'CPC') is very clear that the word plaintiff 'shall be held to include as an appellant' and as such the provisions of Order-XXII which is a provision as regards the death, marriage and insolvency of the parties will clearly apply to the appellate proceeding.

4. Considering the above, the impugned order dated 20.01.2023 is quashed and set aside.

5. The applications are remanded to the District Court, Jalna to be decided in accordance with law by taking into consideration the provisions of the Order-XXII of the CPC and after hearing the parties to the applications. The applications to be decided by a reasoned speaking order.

6. This Court is informed that the appeal is fixed for judgment today. The District Judge, Jalna is directed not to pass the

judgment today and the same to be passed only after deciding these applications.

7. Writ Petition is allowed with the above terms.

(SHARMILA U. DESHMUKH, J.)

GGP