

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 23 OF 2021

Hanumandas Jagannath Kabra
(Deceased through LRs)

Appellants

Versus

Satyanarayan Jagannath Kabra
(Deceased through LRs) & others

Respondents

Mr. V. D. Patnurkar, Advocate for the appellants.

Mr. R. R. Sancheti, Advocate for respondents No. 1-1 to 1-3.

Mr. R. H. Jobanputra, Advocate for respondents No. 2/1 and 2/2.

CORAM : R. M. JOSHI, J.

DATE : 17th APRIL, 2023.

PER COURT :

1. This appeal from order takes exception to the order dated 4th February, 2020 passed in Regular Civil Appeal No. 8/2019 whereby the matter was remanded back to the Trial Court for consideration of application for condonation of delay caused in filing the application for setting aside abatement and bringing legal heirs of deceased defendant No. 2 on record and also for consideration of application for amendment of the suit.

2. Perusal of Order 22 Rule 4 of the Code of Civil Procedure provides that where a defendant dies and the right to sue survives,

the legal representatives of such defendant ought to be brought on record. Here in this case, having regard to the nature of proceeding, it cannot be said that the right to sue against deceased defendant No. 2 has not survived. Rule 4(4) of Order 22 of the Code of Civil Procedure only provides that exemption may be given to the plaintiff from substituting the legal representatives of defendant, who though filed written statement but failed to appear and contest the suit. This provision enables the plaintiff not to take steps to bring legal representatives of such defendant on record. Here in this case, however, since legal heirs of deceased defendant No. 2 have filed application to bring themselves on record and in such circumstances, there is no application of Order 22 Rule 4(4) of the Code of Civil Procedure. The Trial Court has wrongly applied the said provision to the facts of the case which is rightly reversed by the First Appellate Court by passing the impugned order. Hence, there is no merit in the appeal. Appeal stands dismissed.

(R. M. JOSHI)
Judge

dyb