

Pallavi

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

WRIT PETITION NO.7218 OF 2022

Amol Bhaskar Sulakha	... Petitioner
Versus	
Chirantan Dinkar Sulakhe and Anr.	... Respondents

Mr. Vishal Kanade i/b. Mr. Gurdeep Singh Sachar, for the Petitioner.
Ms. Leena Patil for the Respondents.

CORAM: MADHAV J. JAMDAR, J.
DATE : 20th JANUARY, 2023

P.C.:

1. Heard Mr. Kanade, learned counsel appearing for the Petitioner and Ms. Leena Patil, learned counsel appearing for the Respondents.
2. The impugned order in the present Petition is order dated 7th April 2022 passed by the learned 3rd Jt. Civil Judge, Junior Division, Barshi below Exh.42 in Reg. Civil Suit No.218 of 2021. By the impugned order, the said Exh.42 was rejected as *inter-alia*, it has been contended by the Petitioner that on account of death of plaintiff no.3, plaintiff no.1 – Firm i.e. M/s. Dattatray Vishwanath Sulakhe & Sons has become proprietary firm of plaintiff no.2. The said application was rejected by the learned Trial Court on the basis of sections 46, 47 and 48 of the Indian Partnership Act, 1930. There is no illegality in the impugned order requiring interference by this

Court under writ jurisdiction.

3. Mr. Kanade, learned counsel appearing for the Petitioner, after arguing the matter for sometime, states that he has instructions to withdraw the said Exh.42 application. He states that the Petitioner be granted liberty to file fresh application only to bring on record the factum of death of plaintiff no.3 and for deletion of name of plaintiff no.3 from the cause title of the plaint and for pleading that the Petitioner is the sole surviving partner of the firm. He categorically states that the Petitioner has given up the contention that the Petitioner has become proprietary concern of the plaintiff no.1 – Firm.

4. As the Petitioner is withdrawing the application bearing Exh.42, the impugned order dated 7th April 2022 passed by the learned 3rd Jt. C.J.J.D., Barshi below Exh.42 does not survive. Thus, Exh.42 application is allowed to be withdrawn and dismissed as withdrawn. Consequently, impugned order dated 7th April 2022 is quashed and set aside in view of withdrawal of said Exh.42 application and dismissal of the same as withdrawn. However, the Petitioner is granted liberty to file fresh application so as to only bring on record the factum of death of plaintiff no.3 and seeking permission to delete plaintiff no.3 from the cause title of the plaint and for pleading that the Petitioner is the sole surviving partner of

the firm.

5. However, it is clarified that all the contentions with respect to fresh application which is sought to be filed by the Petitioner are expressly kept open and it is clarified that this Court has not considered the merits of such fresh application.

6. Ms. Patil also points out that there is another application pending bearing Exh.66 filed in said Reg. Civil Suit No.218 of 2021 taken out by the heirs of deceased plaintiff no.3 seeking their impleadment as defendants in the suit. She states that the said application be also decided along with such fresh application which is proposed to be filed by the present Petitioner.

7. The Petitioner i.e. the plaintiff no.2 to file such fresh application on or before 6th February 2023.

8. The learned Trial Court is requested to decide such fresh application along with the said application bearing Exh.66 filed by the heirs of plaintiff no.3. It is clarified that all the contentions of both the parties are expressly kept open and this Court has not considered the merits of the rival contentions. Writ Petition is disposed of in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)