

Sonali

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

**SECOND APPEAL NO.471 OF 2021
WITH
INTERIM APPLICATION NO.4169 OF 2021**

Subhash Nemgonda Patil	...Appellants/
Since Deceased Through LR's	Applicants
A. Smt. Sushila Subhash Patil & Ors.	
Versus	
Shri. Mansingh Bhagwan Shinde	...Respondent

Mr. Akshay A. Kulkarni, for the Appellants/Applicants.

Mr. Sandesh D. Patil i/b. Prithviraj S. Gole, for the Respondent.

CORAM : MADHAV J. JAMDAR, J.

DATE : 14th FEBRUARY 2023

P.C.:

1. Heard Mr. Akshay A. Kulkarni, learned counsel appearing for the Appellants and Mr. Sandesh D. Patil, learned counsel appearing for the Respondent.

2. Mr. Akshay A. Kulkarni submitted that following substantial question of law is involved in this Second Appeal :

“Whether the learned Trial Court has recorded satisfaction as required by Order 22 Rule 4(4) of Civil Procedure Code?”

3. It is the contention of Mr. Sandesh D. Patil, learned counsel appearing for the Respondent that, sufficient compliance is made with respect to Order 22 Rule 4(4) of C.P.C. However, he submitted that, in any case, the learned First Appellate Court has

recorded satisfaction as required under Order 22 Rule 4(4) of C.P.C.

4. Perusal of the record shows that the Defendant appeared through Advocate in R.C.S. No.469 of 2012 and the original Defendant expired thereafter. It further appears that, although letter was sent to the son of deceased Defendant by learned Advocate appearing for the deceased-Defendant, no response was received by said learned Advocate and, therefore, he filed pursis to that effect.

5. To consider the rival submissions it is necessary to set out Order 22 Rule 4(4) of Civil Procedure Code which reads as under:

“The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.”

(Emphasis added)

Order 22 Rule 4 (4) makes it very clear that, Court's satisfaction is very necessary to pass order under said provision.

Therefore, it is necessary that Court should apply it's mind to the factual situation and pass order granting exemption to the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing, if factual position as contemplated in O 22 R 4(4) exists. It is also important to note that Court "may" grant such exemption and it is not necessary that in every case such exemption can be granted. In fact nature of said power very clearly shows that the same is required to be used sparingly. The Court is required to apply mind to the various factors of each individual case.

6. In this case, there is nothing on record to show that the learned Trial Court has passed order as required under Order 22 Rule 4(4) of Civil Procedure Code, 1908 wherein, it is imperative that, satisfaction of the Court is required to be recorded to grant exemption to the Plaintiff from the necessity of substituting the legal representatives of any such Defendant who has failed to file the written statement or who, having filed it, has failed to appear and contest the suit at the hearing. In fact the Respondent-Plaintiff has not filed any application under Order 42 Rule 4(4) of Civil Procedure Code, 1908.

7. In view of above position, Mr. Sandesh D. Patil, learned counsel appearing for the Respondent took time to take instructions from the Respondent who was present in the Court on earlier occasion and after taking instructions, he submitted that, the Respondent has no objection, if the impugned Judgment and Decree dated 8th March, 2021 passed by learned District Judge-1, Sangli in R.C.A. No.41 of 2015 and Judgment and Decree dated 26th August, 2013 passed by learned 7-Joint Civil Judge, Junior Division, Sangli in R.C.S. No.469 of 2012 are quashed and set aside and the said R.C.S. No.469 of 2012 is remanded to the learned Trial Court.

8. After remand the learned Trial Court should proceed to consider whether the requirements of Order 22 Rule 4(4) are fulfilled in this case, and whether the order as contemplated under Order 22 Rule 4(4) is required to be passed.

9. Mr. Sandesh Patil learned counsel appearing for the Respondent i.e. original Plaintiff states that within a period of four weeks the Respondent-Plaintiff will file application under Order 22 Rule 4 (4) of C.P.C.

10. Learned Trial Court is requested to decide the said application thereafter within a period of four weeks.

11. For the above reasons, the Second Appeal is allowed by passing the following order:

ORDER

i. The Judgment and Decree dated 26th August, 2013 passed by the learned 7-Joint Civil Judge, Junior Division, Sangli in R.C.S. No.469 of 2012 and Judgment and Decree dated 8th March, 2021 passed by learned District Judge-1, Sangli in R.C.A. No. 41 of 2015 are quashed and set aside.

ii. The said R.C.S. No.469 of 2012 pending before the learned Civil Judge, Junior Division, Sangli is restored to file.

iii. The Plaintiff to remain present before the concerned learned Civil Judge, Junior Division, Sangli on 28th February 2023 at 11.00 a.m. to fix the schedule of the suit.

iv. The Plaintiff to file an appropriate application under Order 22 Rule 4(4) of C.P.C. on or before 14th March 2023. If such application is filed on or before 14th March 2023, the learned Trial Court is requested to decide the same within a period of six weeks thereafter in accordance with law. It is clarified that all the contentions as regards application under Order 22 Rule 4(4) of C.P.C. are expressly kept open.

v. The Second Appeal is disposed of in above terms.

vi. In view of disposal of the Second Appeal, nothing survives in the Interim Application and the same is also disposed of.

(MADHAV J. JAMDAR, J.)