

Ghuge

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

FIRST APPEAL NO.1362 OF 2013

Ghisulal S. Rathod (Since Deceased)
Through Legal Heirs Dakshaben
Ghisulal Rathod and Ors ... Appellants

V/s.

Stonehenge Construction Pvt. Ltd and
Ors ... Respondents

**WITH
CIVIL APPLICATION NO.3725 OF 2013
IN
FIRST APPEAL NO.1362 OF 2013**

Ghisulal S. Rathod (Since Deceased)
Through Legal Heirs Dakshaben
Ghisulal Rathod and Ors ... Applicants

V/s.

Stonehenge Construction Pvt. Ltd and
Ors ... Respondents

**WITH
INTERIM APPLICATION NO.166 OF 2023
IN
FIRST APPEAL NO.1362 OF 2013**

Stonehenge Construction Pvt. Ltd and
Ors ... Applicants

In the matter between

Ghisulal S. Rathod (Since Deceased)
Through Legal Heirs Dakshaben
Ghisulal Rathod and Ors ... Appellants

V/s.

Stonehenge Construction Pvt. Ltd and
Ors ... Respondents

**WITH
INTERIM APPLICATION NO.18901 OF 2022
IN
FIRST APPEAL NO.1362 OF 2013**

Dakshaben Ghisulal Rathod and Anr	... Applicants
In the matter between	
Ghisulal S. Rathod and Ors	... Appellants
V/s.	
Stonehenge Construction Pvt. Ltd and Ors	... Respondents

**WITH
CIVIL APPLICATION NO.3720 OF 2013
IN
FIRST APPEAL NO.1362 OF 2013**

Ghisulal S. Rathod (Since Deceased) Through Legal Heirs Dakshaben Ghisulal Rathod and Ors	... Applicants
V/s.	
Stonehenge Construction Pvt. Ltd	... Respondent

**WITH
INTERIM APPLICATION NO.18568 OF 2022**

Mr. Piyush Shah a/w Dishang J. Shah for the applicant.
Mr. Chirag Kamdar a/w Suraj Juneja i/b Wadia Ghandy and Co. for applicant in I.A. No. 166/2023.
Mr. J.M Disilva for the applicant in IA No.18901/2022.
Ms. Tanaya Goswami AGP for the State.
Mr. Santosh Parad for respondent No.1/MCGM.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 7, 2023

P.C.:

INTERIM APPLICATION NO.166 OF 2023

1. The respondent No.1 has filed present Interim Application seeking recall of order dated 10th December, 2022 allowing the application of appellant Nos.1A to 1H to bring themselves on record. The Registrar (Judicial-II) allowed the application mainly on the ground that the appellant Nos. 1A to 1H are the legal heirs of original appellant No.1.

2. It appears that the learned Registrar failed to adjudicate, as to whether the appellant Nos. 1A to 1H are the legal representatives of the appellant No.1. There is distinction between the expression of legal heirs and legal representatives. Legal Representatives are those persons who in law are entitled to represent of estate of party to the litigation. Application to bring the legal representatives on record can be allowed provided the applicant demonstrates that right to sue survives in him/them.

3. On perusal of the plaint it appears that the predecessor-in-title of applicant Nos.1A to 1H had filed suit in his capacity as Secretary of a plaintiff No.2 society. On perusal of paragraph 1 of the plaint shows that predecessor of appellant Nos.1A to 1H was enforcing rights conferred on plaintiff No.2 as co-operative society and not in his individual capacity.

4. According to the learned advocate for the appellant No.1A being member of housing society is entitled to add himself as a party to the First Appeal. It is well settled in view of Judgment of Constitution Bench of Apex Court in the case of **Damansingh Vs.**

State of Punjab and Ors reported in 1985 (2) SCC 670, and the Division Bench of this Court in the case of **Dinesh Kantilal Panchal Vs. State of Maharashtra** reported in 2008 (6) Mh.L.J 819, the consistent view in relation to the rights of member to file proceedings independent of Co-operative Societies has been restricted by holding that once a persons becomes member of Co-operative Society he loses his individuality *qua* the society and he has no independent rights except those given to him by statute or bye law. He must act and speak through Society. Appellant Nos.1A to 1H has not pointed out any statutory right or right under bye law as legal heirs to step into shoes of original plaintiff No.1. The plaintiff No.1 was party to the suit in his capacity of Secretary of plaintiff No.2 society and, therefore, any other person holding the office of Secretary of plaintiff No.2 may be entitled to file such application.

5. In that view of the matter, the order dated 10th October, 2023 is unsustainable.

6. For the aforesaid reasons, the Interim Application is allowed in terms of prayer clause (a).

7. The Interim Application No.18568 of 2022 stands rejected.

INTERIM APPLICATION NO.18901 OF 2022

8. For the reasons stated in the Interim Application No.166 of 2023 this Interim Application does not survive.

(AMIT BORKAR, J.)