

VRJ

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

WRIT PETITION NO.2454 OF 2023

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Janardan Hiranman Bhoir

... Petitioner

V/s.

Hiranman Bama Bhoir (Deceased)

Through Legal Heirs

... Respondents

Mr. Rohit Joshi for the petitioner.

Mr. A. R. Shaikh for respondent Nos.7, 14 & 15.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 13, 2023

P.C.:

1. By the impugned order, the Trial Court rejected application filed by the petitioner (plaintiff No.1b) seeking adjournment to lead oral evidence.
2. The Trial Court on such application recorded a finding that plaintiff No.1b is already deleted vide order below Exhibit-211 and, therefore, plaintiff No.1b is not entitled to lead evidence.
3. On perusal of order below Exhibit-211, it is evident that only request made by application below Exhibit-211 was to place on record amended copy of the plaint. What is permitted by the said order was to place amended copy of the plaint on record. Such order has no effect of deleting plaintiff No.1b from the array of the

suit. Except order passed below Exhibit-211, there is no other order brought on record which indicates that plaintiff No.1b was deleted. Therefore, the Trial Court could not have recorded a finding that plaintiff No.1b is already deleted. Therefore, it is necessary in the interest of justice that the Trial Court shall reconsider the petitioner's application and at the same time shall also decide whether the plaintiff No.1b is entitled to lead oral evidence in the facts of the case. With this clarification, the writ petition stands disposed of. No costs.

4. The Trial Court shall decide the application at Exhibit-272 within two weeks from date of assigning in the suit.

(AMIT BORKAR, J.)