

SA Pathan

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

CIVIL REVISION APPLICATION NO.394 OF 2016

The Western India Tanneries Ltd. ... Applicant
V/s.
Siddharth Kathju & Ors. ... Respondents

Mr. Yasmin E. Tavaría a/w Mr. Abhishek Yadav, for applicant.

Mr. Parth Modak i/by Mr. Bhushan Walimbe, for respondent Nos. 10 & 11.

Mr. Sandeep Waghmare, for respondent No.9.

Mr. Raj Patel a/w Nidhi Chavan i/by Indus Law, for respondent Nos.1a, & 1b.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 25, 2023

PC.:

1. By the impugned order, the Civil Court has allowed application under order 22, Rule 3 of the Code of Civil Procedure, 1908.

2. Considering the issue involved in the suit, an application filed by the legal representatives and the reply filed by the contesting parties, it appears that there is dispute amongst the parties as to whether the applicants who have been filed application below Exhibit 62 are the legal representatives of the

plaintiff (deceased) or not. In such a situation, it is an obligation cast on the Court to decide the issue as to whether a person who applied to bring them on record, are legal representatives or not.

3. Such inquiry needs to be held under Order 22, Rule 5 of the Code of Civil Procedure, 1908.

4. In absence of such inquiry, the Court could not have allowed the application under Order 22, Rule 3 of the Code of Civil Procedure, 1908. Therefore, the impugned order dated 29 February 2016 passed by the 6th Joint Civil Judge, Thane in Special Civil Suit No.116 of 2014 is set aside.

5. The application below Exhibit 62 is restored to the file of the Trial Court.

6. The Trial Court shall decide such application on its own merits by following procedure under Order 22, Rule 5 of the Code of Civil Procedure, 1908.

7. The civil revision application stands disposed of. No costs.

(AMIT BORKAR, J.)