



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**WRIT PETITION NO.8335 OF 2023**

Vaijanti Wd/o Pradeep Kakirwar & Ors. .Vs. Dr. Seema W/o Arun Mankar & Ors.

Office Notes, Office Memoranda of  
Coram, appearances, Court's Orders  
or directions and Registrar's order

Court's or Judge's Order

Shri S.S. Sitani, Adv. for petitioners.

Shri G. Sawal, Adv. a/w Shri Yash Katari, Adv. for respondent No.1.

**CORAM : ANIL S. KILOR, J.**  
**DATED : 19/12/2023**

1. Heard.
2. The application moved by the legal heirs of defendant No.1, the petitioners to cross-examine the plaintiff came to be rejected by the learned trial Court vide order dated 29.11.2023 which was the subject matter of Misc. Civil Application No.207 of 2023 filed before the Special Court for Differently able persons, Senior Citizens and Marginalized Sections of Society and District Judge-12 and Additional Sessions Judge, Nagpur, the said appeal came to be dismissed vide impugned judgment and order dated 15.12.2023. Hence, this petition.
3. Admittedly, the petitioners are the legal heirs of defendant No.1 who had filed written statement to the suit filed by the respondent No.1 for eviction and possession under Section 26 of the Provincial Small Causes Courts Act, 1887 and thereafter, he also cross-examined the plaintiff in

light of the pleadings made in the written statement in the year 2013. The defendant No.1 died in the year 2023. Thereupon, the petitioners were brought on record as legal heirs. Thereafter, they filed additional written statement on record. After the same, the petitioners applied for permission to cross-examine the plaintiff in light of plea raised by them in additional written statement. The said permission came to be rejected on the ground that, the matter is time bound and the petitioners are trying to prolong the matter.

4. The trial Court has further observed that, there is no need to cross-examine the plaintiff by the party brought on record as legal heirs of the defendant No.1, considering the limited role of such party up to the extent of defence which is appropriate to his character as legal representative of deceased defendant No.1.

5. The learned trial Court has further observed that the petitioners have taken some contrary pleas in their written statement to the defence taken by the original defendant in the written statement. The same was the ground for upholding the order passed by the trial Court dated 29.11.2023 by the Appellate Court in the impugned judgment and order dated 15.12.2022.

6. The Hon'ble Supreme Court of India in the case of *Vidyawati Vs. Man Mohan and others*<sup>1</sup>, while following the earlier judgments in *Bal Kishan vs. Om Parkash*, 1986(2) RCR (Rent) 551 and *Jagdish Chander Chatterjee v. Sr Kishan*, 1973(1) SCR 850, opined that “*when a person is impleaded to represent a deceased defendant, all right under Order 22 Rule 4(2) CPC and defences available become available to him. In addition, if such a person had any independent right, title or interest in the property, then he had to get himself impleaded in the suit as a party defendant in which case he could set up his own independent right, title or interest to resist the claim made by the plaintiff.*”

7. In the circumstances, as the petitioners were impleaded to represent the deceased defendant, all right under Order 22 Rule 4(2) of the Code of Civil Procedure and defences available become available to him.

8. Thus, as the deceased defendant has already cross-examined the plaintiff in view of his case in defence, I do not find any illegality committed by the learned Trial Court as well as learned Appellate Court in rejecting the prayer of the petitioners to cross-examine the plaintiff.

Accordingly, the writ petition is **dismissed**.

**JUDGE**

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1 (1995) 5 SCC 431