



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

911 CIVIL APPLICATION NO. 679 OF 2024

IN FA/79/2023 WITH CIVIL APPLICATION NO. 680 OF 2024
IN FA/80/2023 WITH CIVIL APPLICATION NO. 681 OF 2024
IN FA/80/2023 WITH CIVIL APPLICATION NO. 16345 OF 2022
IN FA/80/2023 WITH CIVIL APPLICATION NO. 16348 OF 2022
IN FA/79/2023

SHIVAJI S/O GOVIND PAWAR

VERSUS

**THE STATE OF MAHARASHTRA THR THE COLLECTOR,
OSMANABAD AND ORS**

.....

Advocate for Applicant : Mr. Patil Laxmikant C.
AGP for Respondents-State : Mr. A. S. Shinde.
Advocate for Respondent No.3 : Mr. Avishkar S. Shelke h/f
Ms. Shelke Sunita Dasharat.

.....

CORAM : S. G. MEHARE, J.

DATE : 01.03.2024

PER COURT :-

1. Heard the respective learned counsels for the parties.
2. In a similarly situated applications, the Court allowed to withdraw 75% of the amount. Hence, the following order :

ORDER

- (i) The applications are allowed.
- (ii) The applicants are allowed to withdraw 75% of the amount deposited with this Court on furnishing usual undertaking. Balance 25% be

deposited in fixed deposit in any of the Nationalized Bank as per rules.

Civil Application/s for Amendment

3. The sole deceased claimant has died after passing the impugned award.
4. Leave granted to correct the name of respondent No.3.
5. Civil Application/s stand allowed.

Civil Application No.680 of 2024

6. The appellants have impugned the award of the reference Court. Respondent No.1 died after the impugned award was passed. The notices sent in appeal to respondents are yet to be received. However, instead of informing the appellant, the legal heirs filed their application to take them on record as legal heirs of the deceased respondents. However, before bringing them on record as legal heirs of the appellant, they have filed applications for withdrawal of money.

7. The Code of Civil Procedure applies to the appeals. The first appeal is a continuation of the suit. Order 22 Rule 4 of the C.P.C. provides for the procedure in case of death of one of the several defendants or of sole defendant. Where the

defendant/s dies the plaintiff/appellant has to bring the representatives of the deceased within 90 days. Rule 3 provides for the consequences of not bringing the legal heir/s of the deceased defendants. If the legal representative/s is/are not brought within time limited by law, the suit shall abate against the deceased defendant. Rule 9 provides for the consequences of abatement, that bars a subsequent suit on the same cause of action. The provisions of Order 22 apply to the appeals as provided under 11. Only the appellant/plaintiff has to bring the legal representative of the deceased defendant/s. It reveals that after the impugned order was passed, the sole respondent, who was the plaintiff, died. Then, the appeal was filed in his name. It is more serious to file an appeal against the deceased party to the suit.

8. The procedure adopted here by the respondent to file an application to bring the legal heirs of the respondent is foreign to the law. Nobody is able to convince the Court that such a provision has been made or quoted in the Bombay High Court Appellate Side Rules, 1960, nor under any other provision of the law. At the most, it could be understood that the legal heirs of the deceased respondent have informed the appellant to take appropriate steps. However, instead of doing so here in

Aurangabad Bench, the legal representatives directly file applications to bring legal representatives. Many lawyers contend that bringing a legal representative is a technical issue. The Court did not agree with them because failing to bring a legal representative within a time limit has consequences, as discussed above. It is the mandate of law that the legal representatives of the respondents should be brought by the appellant/plaintiff. Abatement takes place on its own with the passage of time, and no specific order of the Court is envisaged. Once the appeal has abated, nothing remains before the Court. Then, the question is how the Court would allow the legal representatives of the respondent to bring them on record and would automatically set aside abatement. This is also not the law. Though High Court legal practitioners take it technically, it is purely the provisions of law. The Court is bound to observe the provisions of the law and apply them to each case wherever required. Similar orders have been passed in many cases, but the concerned did not take them seriously, and wrong and illegal practices continued.

9. The Registrar (Judicial) is directed to verify this fact and point out the provisions of law to the concerned. If the lawyers are not convinced, he should place the application with

objection. It would be easy for the Court to understand the matter and help in saving the Court's precious time.

10. For the above reasons, the application stands dismissed.

11. Since the appellants learned about the death of sole respondents for the first time by way of this application, the counsel for the appellant may bring the legal representatives by following the appropriate procedure of the law.

12. List the matters in due course.

(S. G. MEHARE, J.)

...

vmk/-