

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

**INTERIM APPLICATION NO.17902 OF 2023**  
**IN**  
**FIRST APPEAL (ST) NO.31661 OF 2010**  
**WITH**  
**CIVIL APPLICATION NO.96 OF 2023**  
**IN**  
**FIRST APPEAL (ST) NO.31661 OF 2010**  
**WITH**  
**CIVIL APPLICATION NO.4823 OF 2010**  
**IN**  
**FIRST APPEAL (ST) NO.31661 OF 2010**  
**WITH**  
**CIVIL APPLICATION NO.4824 OF 2010**  
**IN**  
**FIRST APPEAL (ST) NO.31661 OF 2010**

Om Dutt Sharma & Ors. : Applicants  
Vs.  
The Trustees of Port of Bombay & Ors. : Respondents

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Adv. Chandrakant N. Chavan for the Applicants.  
Adv. Dhruv Gandhi a/w Adv. Nina Motiwalla, Adv. Janhavi Kandekar i/by  
Motiwalla & Co. for the Respondent No.1.  
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**CORAM : KISHORE C. SANT, J.**

**DATE : 14TH FEBRUARY, 2024**

**PC. :**

1. Heard the parties for some time.
2. Both these Applications are filed in peculiar circumstances

where it is reported that Respondent Nos.2 & 3 in the Appeal are dead. However whereabouts and the information in respect of the legal heirs could not be gathered in spite of efforts. These Applications are therefore filed for substituted service upon unknown legal heirs of deceased Respondent Nos.2 & 3.

3. This Court therefore asked to learned Advocate as to how dead person can be served. If the Respondents are dead to the knowledge of the Applicant then whether it is not necessary to give details of the legal heirs. The learned Advocate therefore relied upon the judgment reported in 2018 (5) Bom.C.R.137 in the case of ***Trustees of N.M. Petit Charity Fund & ors. Vs. Heirs & Legal Representatives***. This Court in the said judgment held that in peculiar circumstances, it may happen that there is no information about the legal heirs of the deceased and at time it may become impossible to gather such information and details of the legal heirs. In such circumstances even if a suit is brought in the name of unknown heirs and legal representatives of the last recorded tenant and the suit is resulted in an *ex-parte* decree. In these circumstances the decree was challenged as not proper. However peculiar circumstances decree would not be passed. In para 22 this Court held that the Court may insist that there may be cases where the families are dispersed not only across

the city but across the country with heirs living abroad. In such cases, a notice can be published in newspaper against unknown heirs.

4. Learned Advocate for the Respondent No.1, however, submits that such course is not available. He relied upon the judgment reported in 2010 (4) Bom.C.R. 336 in the case of ***Shrikant Shambu Volvoikar Vs. Narendra Pandu Chatim and Orthers***, wherein it is held that the service on person of the defendant is the basic rule. Substituted service by publication is an exception and is meant only in cases contemplated in Rule 20, Order, 5, C.P.C. It was held that the Plaintiff ought to have found out who are the legal heirs. It is further held that a suit cannot be allowed to be filed against unknown heirs of the deceased defendant because personal service cannot be effected on them. The summons cannot be also effected on a defendant whose address was not known. In absence of notice defendant cannot defend a suit. In such situation the substituted service would only be farce.

5. Learned Advocate thus submits that neither of the judgment is considered in the case of ***Trustees of N.M. Petit Charity Fund*** (supra).

6. Be that as it may, this Court finds that heirs the Respondent Nos. 2 & 3 are dead. Their legal heirs are not known. The Applicant tired to get the information. However, they could not get any such information.

This Application is filed in such circumstances. This Court finds that in such circumstances the Application can be allowed. Issue notice to the unknown legal heirs by way of public notice by publishing in the newspapers circulated in the area where the Respondents were lastly deceased resided. Hence the following order.

**ORDER**

- a) Both Applications stand allowed.
  - b) Applicants are permitted to serve the Respondents by way of substituted service by publishing the same in the newspaper against the unknown legal heirs of Respondents.
  - c) Notice, returnable four weeks. Notice be published at least two weeks prior to the next date.
  - d) Civil Application stands disposed of.
7. List the Appeal after 8 weeks.

**(KISHORE C. SANT, J.)**