

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 3 OF 2024

IN

CIVIL REVISION APPLICATION NO. 13 OF 2010

ALONGWITH

INTERIM APPLICATION NO. 3761 OF 2023

Milan B. Shah

..... Petitioner

VERSUS

Swami Kashikanandji Guru

Naringhji Maharaj

..... Respondent

Ms.Tanaya Patankar i/b. Mr.Rahul Shirvaokar for the Petitioner.

Mr.Amarjeetsingh Girase i/b. Mr.Onkar Wable for the Respondent
Nos. 2, 3 and 5.

CORAM: RAJESH S. PATIL, J.

DATE : 22 MARCH, 2024

P.C. :-

This Review Petition filed by the Original Applicant challenges an order dated 14 September 2023 passed in Interim Application No.3761 of 2023.

2. Interim Application No.3761 of 2023 was filed by the Original Applicant seeking permission to bring on record the

proposed legal heirs of the deceased Original Applicant Mahendra Kantilal Shah. Since there was a delay in filing the application, the prayer for setting aside of abatement was also sought. Interim Application was filed in Civil Revision Application, which was already 'Admitted'.

3. By an order dated 14 September 2023, passed in Interim Application No.3761 of 2023, the said application was dismissed. Consequently the Civil Revision Application No.13 of 2010 was disposed of.

4. Ms.Patankar appearing for the Applicant submits that the said order dated 14 September 2023 could not have been passed since the Interim Application No.3761 of 2023 was filed for bringing the legal heirs on record as per the provisions of the Code of Civil Procedure. She further submits that Civil Revision Application filed in this Court, was filed under Section 115 of the Code of Civil Procedure. The Interim Application was filed in Civil Revision Application. She further submits therefore there is

error apparent on face of the records.

5. After the matter was argued for some time, both the learned counsel agree to allow the review petition with certain directions.

6. Both the learned counsel agree, to the legal proposition as to when an applicant who is a tenant dies, in the civil revision application, an interim application/civil application to bring on record the legal heirs of the deceased applicant, is preferred under the provisions of Order XXII of the Code of Civil Procedure, 1908.

7. In the present proceedings, a similar kind of application was preferred by the applicant who claimed himself to be the proposed legal heir of the deceased applicant original tenant, there was prayer for setting aside of the abatement and also to bring the proposed legal heirs on record.

8. In paragraph no.4 of the said application, it was specifically stated that the original defendant who had filed the civil revision application, was not married and his parents had predeceased him. And out of his four siblings, only one sibling Mr.Bhupendra Shah was married and his son Mr.Milan Bhupendra Shah had preferred an application to bring himself on record in the proceedings as the legal heir being the closest surviving member.

9. Review Petition No. 3 of 2024, is hereby allowed, with following directions :-

(i) By consent, the impugned order dated 14 September, 2023 passed in Interim Application No. 3761 of 2023 in Civil Revision Application No. 13 of 2010 is quashed and set aside.

(ii) Civil Revision Application No. 13 of 2010 is taken back on record/file. All interim orders passed in Civil Revision Application No. 13 of 2010 stand

revived automatically.

(iii) Interim Application No. 3761 of 2023 which was filed to bring on record the legal heirs of the deceased applicant, by consent is hereby allowed. Interim application is allowed in terms of prayer clauses (a), (b) and (c). Amendment to be carried out within a period of two weeks from today.

(iv) Hearing of the Civil Revision Application No. 13 of 2010 is hereby expedited.

(v) The applicant to file a short synopsis, proposition of law and the judgments on which they rely upon before the next date of the hearing.

[RAJESH S. PATIL, J.]