

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4301 OF 2024

Manakshi Mahadev Berde and Anr. ... Petitioners

V/s.

Manoj Madhukar Berde and Ors. ... Respondents

Mr. Sankar Marathe, Advocate for the Petitioner.

CORAM : RAJESH S. PATIL, J.

DATED : 02 APRIL 2024

P.C.:

1. The Petitioner herein is the original defendant in an R.A.D. proceedings.
2. Mr. Marathe submits that the original plaintiff after filing his evidence and before he could have been cross-examined, died. Hence, his legal heirs were brought on record. After the legal heirs were brought on record they filed and pursis thereby, closing their evidence. Subsequently the legal heirs of the original plaintiff filed an application to adopt the evidence lead by the original plaintiff. Such application preferred by the legal heirs of the original plaintiff were rejected. After few years a new application was filed by the plaintiff filed a fresh application to lead evidence and withdraw and set aside the no cross order to file an application to withdraw the close evidence pursis filed on behalf of the plaintiff.

3. Mr. Marathe submits that in the meantime, since there was no evidence on behalf of the plaintiff the defendant had already filed an application for closing his evidence. The said application of the original defendant were accepted by the Court.

4. Mr. Marathe submitted that the Small Cause Court without considering the legal provisions excepted the application of legal heirs of original plaintiff, and allowed the same by imposing cost of Rs.1,000/-. Hence, the present Writ Petition is filed challenging the said order dated 11 September 2023. He submits that the next date of the hearing before the Trial Court is on 4 April 2024.

5. Issue Notice to Respondent, returnable after 4 weeks. Hamdast permitted. Apart from the Court notice, advocate for the Petitioner is permitted to serve the respondents by advocate's private notice by all permissible modes of service and file affidavit of service to that effect before the next date of the hearing.

6. In the meantime, till the next date of the hearing, ad-interim relief in terms of prayer clause (c) and (d). The prayer clause (c) and (d) of the Writ Petition reads as under:-

c) Pending the hearing and final disposal of the present Petition, this Hon'ble Court may be pleased to stay the effect and implementation of Order dated 11 September, 2023.

d) Pending the hearing and final disposal of the present Petition, this Hon'ble Court may be pleased to stay the further proceedings in R.A.D. Suit No.206 of 2014 pending before the Ld. Court of Small Causes at Mumbai.

(RAJESH S. PATIL, J.)