

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

WRIT PETITION NO. 12964 OF 2024

Induben Jethalal Nagrecha

Through Constituted Attorney,

Jayant Prabhudas Thakkar

....Petitioner

: Versus :

Mangal Prabhu Lodha & Ors.

....Respondents

Mr. Rashid Khan i/by. Ms. Vinali Bhaidkar, for the Petitioner.

Mr. Amogh Singh a/w. Mr. Aditya Dhatrak, Priyal Chheda i/by. Mr. Jeet Gandhi, for Respondent Nos.1 to 3.

Mr. Rahul Arora, for Respondent Nos.4 and 5.

CORAM : SANDEEP V. MARNE, J.

Dated : 25 November 2024.

P.C. :

1) The petition challenges order dated 7 February 2023 passed by the Appellate Bench of the Small Causes Court rejecting Revision Application No.69/2023 filed by the Petitioner in which she had challenged order dated 14 December 2022 passed by the Trial Court allowing application at Exhibit-53 filed by the Plaintiffs to bring on record Respondent Nos.4 and 5 as the legal heirs of the deceased Defendant.

2) It appears that the Petitioner herself had filed application at Exhibit-60 claiming that she is the real legal heir of the deceased Defendant and that therefore she needs to be brought on record. That application at Exhibit-60 was rejected by the Trial Court by order dated 14 December 2022. However, Petitioner's Revision against the order dated 14 December 2022 has been allowed by the Appellate Bench by order dated 2 January 2024, operative portion of which reads thus :

1. Revision Application is allowed.
2. Order of learned trial Court below Exh.60 in R.A.E. Suit No.1673/2022 is quashed and set aside.
3. Matter is remanded back to the learned trial Court.
4. The learned trial Court is directed to carry out enquiry as per Order 22 Rule 5 of CPC and decided Whether applicant is heir of the deceased or not and pass fresh order on Exhibit-60.

3) Thus, now the Appellate Bench has directed the Trial Court to conduct an enquiry into the question as to who is the real legal representative of the deceased Defendant. Such enquiry would obviously cover Respondent Nos.4 and 5 who are already sought to be brought on record by order dated 14 December 2022. Since the Appellate Bench has directed the Trial Court to conduct an enquiry under Order 22 Rule 5 of the Code, order dated 14 December 2022 passed on application at Exhibit-53 would be subject to the final outcome of that enquiry. To paraphrase, entry of Respondent Nos.4 and 5 into the suit by virtue of order dated 14 December 2022 is not final and is subject to the enquiry that would be conducted by the Trial Court in pursuance of order passed by the Appellate Bench on 2

January 2024. Clarifying the above position, the Writ Petition is disposed of.

4) Needless to clarify that Respondent Nos.4 and 5 shall have an opportunity to be represented in the enquiry that would be conducted by the Trial Court under the provisions of Order 22 Rule 5 of the Civil Procedure Code.

[SANDEEP V. MARNE, J.]

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