



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.2404 OF 2024

(Sau. Anita w/o Deepak Shelare and another Vs. Sau. Rekha w/o Roshan Khobragade and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. M. R. Joharapurkar, Advocate with Mr. P. M. Jain, Advocate for
Petitioners.

None for Respondent Nos.1 & 2.

Mr. N. R. Rode, AGP for Respondent No.3/State.

CORAM: N. R. BORKAR, J.

DATE: 30th SEPTEMBER, 2024.

This petition takes exception to the order dated 3rd February, 2024 passed by the learned District Judge-4, Nagpur below Exhibit-1 in Misc. Civil Appeal No.47/2019.

2. The petitioners herein are the legal representatives of Maroti Bakaram Khobragade, who had filed a suit for declaration, possession, injunction and *measne profit*. Along with the suit, he had filed an application under Order 33 Rule 1 of the Civil Procedure Code (for short 'CPC') to institute suit in *forma pauperis* being an indigent person. By order dated 12th December, 2018, the trial Court rejected the said application. Against the said order of the trial Court, he had filed appeal before the District Court. He died during the pendency of the appeal. The present petitioners after coming on record as his legal representatives filed an application that they are willing to pay the court fee.

3. By the order impugned the learned appellate court has rejected the said application. Consequently the appellate court has dismissed the appeal.

4. I have heard the learned counsel for the petitioners and the learned Assistant Government Pleader for respondent No.3. In spite of service, none appears for respondent nos.1 and 2.

5. The issue involved in the present petition is squarely covered by the judgment of the Hon'ble Supreme Court in the case of *Solomon Selvaraj and others v. Indirani Bhagawan Singh and others (2023) 1 SCC 349*.

6. The Hon'ble Supreme Court in *Solomon Selvaraj and others v. Indirani Bhagawan Singh and others (supra)* has observed thus:

19. However, at the same time taking into consideration Order 33 Rule 15 and 15A CPC and when the application to sue as indigent person is rejected and/or refused, the Court may, while rejecting an application, under Order 33 Rule 15A CPC grant time to the applicant to pay the requisite Court fee within such time as may be fixed by the Court or extended by it from time to time and upon such payment and on payment of cost referred to in Rule 15 within that time, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented, even considering Order 33 Rule 15 CPC on refusing to allow to sue as an indigent person which may be a bar to any subsequent application of the like nature in respect of the same right to

sue, the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, therefore, taking into consideration Order 33 Rule 15A and Order 33 Rule 5 CPC, instead of remanding matter to the learned Trial Court to pass an appropriate order granting the appellants – original applicants time to pay the requisite court fee and now when the appellants have agreed to pay the requisite court fees, we grant further four weeks' time to the appellants – original applicants to pay the requisite court fees and on payment of such court fees the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented.

7. The orders impugned therefore, cannot be allowed to stand. In the result, following order is passed:

- [i] The petition is allowed.
- [ii] The orders impugned are set aside.
- [iii] The petitioners shall pay the court fee within a period of six weeks from today.
- [iv] The trial court, then shall decide the suit in accordance with the law.
- [v] The trial court shall allow the application for substitution, if filed.

8. The petition is disposed of in the aforesaid terms.

(N. R. BORKAR, J.)