



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.2009 OF 2025
IN
CIVIL REVISION APPLICATION NO.105 OF 2022**

**DILIP ANANDA KOLHE AND ANOTHER
VERSUS
RAJESH SHANTILAL LALWANI AND OTHERS**

...
Mr. S. B. Yawalkar, Advocate for the Applicants.
Mr. Girish Rane, Advocate for Respondent No.1.
...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 17th MARCH, 2025.**

ORDER:-

1. The present application is filed by Revision Applicants with following prayers:

“B. Permit the applicant to carry out amendment as mentioned in para 2 and in title of present civil application of respondent no.3 in title of present Revision application”

2. Mr. Yawalkar, learned Advocate appearing for the applicants submits that on 05.10.2020 original plaintiff no.2/present respondent No. 2, Mukesh Shantilal Lalwani expired during pendency of suit. The steps were taken to bring his legal representatives on record of suit. Since application for bringing legal representatives in the original suit was not yet decided, present Civil Revision Application has been filed as per title shown in original suit. An application below Exhibit-184 is filed by

original plaintiff no.1 in pending suit seeking amendment of plaint under Order VI Rule 17 of the Code of Civil Procedure claiming that deceased has executed Will and bequeathed his share of partnership.

3. Mr. Yawalkar would further submit that infact respondent nos.1 to 3 instituted suit claiming rights of partnership firm over suit property. The respondent no.3 is partnership firm, who is made party through partner i.e. respondent no.2-Mukesh Shantilal Lalwani. The respondent no.1 is also one of the partner of firm. Therefore, on death of respondent no.2, respondent no.1 can represent respondent no.3-Firm being partner. If such amendment is permitted, proceeding in Civil Revision Application can be continued as against respondent nos.1 and 3.

4. Per contra, Mr. Rane, learned Advocate appearing for respondent nos.1 to 3 vehemently opposes application by filing affidavit-in-reply. He submits that present application is misconceived in both facts and law, especially when an alternate and more appropriate remedy has not been exhausted. Present application is nothing but attempt to camouflage failure of applicants to take suitable steps within reasonable period. In support of his contentions, he relies upon observations of Supreme Court of India in case of ***Rangubai Jagtap Vs. Sunderabai***

Jedhe¹ and Union of India and Anr. Vs. Jahangir Byramji Jeejeebhoy². Parties who have not been reasonably diligent in prosecuting the matter must suffer.

5. Having considered submissions advanced, first of all reference to original proceeding from which present Civil Revision Application arises would be necessary. The respondent nos.1 to 3 instituted Special Civil Suit No.66/2020 seeking declaration that sale deeds executed in favour of defendant nos.5 to 35 are null and void, since those have been executed without any authority. The suit is instituted in the name of two partners namely Rajesh Lalwani and Mukesh Lalwani alongwith partnership firm namely Anand Shanti Builders and Developers through partner Mukesh Lalwani. The genesis of claim in suit is based on rights of partnership firm in suit property. Essentially, no individual relief is claimed. Eventually, reasonable inference can be drawn that plaintiff nos.1 and 2 i.e. partners of firm are not claiming individual relief, but litigating for joint relief, being partners of plaintiff no.3-partnership firm. The defendants filed applications seeking rejection of plaint on various counts. Those applications are rejected. Therefore, individual Civil Revision Applications are filed assailing such orders before this Court.

¹ AIR 1965 SC 1794.

² AIR 2024 SC 1884.

6. The present Civil Revision Application is filed by some of the defendants. In this background, this Court, *prima facie*, holds that suit is governed by provisions of Order XXX of Code of Civil Procedure. In essence, in case of death of partner, Order XXX Rule 4 would govern proceeding. For ready reference Order XXX Rule 4 of Code of Civil Procedure is given hereunder:

“4. Rights of suit on death of partner.—(1) *Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872 (9 of 1872) where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.*

(2) Nothing in sub-rule (1) shall limit or otherwise effect any right which the legal representative of the deceased may have

— (a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors.”

7. The Division Bench of this Court in case of ***Manohar Kashinath Vyawahare Vs. Dattatraya son of Krishnarao Pitale & Another***³ after considering scheme of Order XXX Rule 4 of Code of Civil Procedure observed as under:

“10. Purport and object of Rule 4 of Order XXX is to save protraction of litigation when a Firm is a party to suit, and suit can be legitimately continued if the legal heirs of deceased partners are not brought before the Court. This provision is an enabling provision and made to avoid protracting the suit or proceedings. Object of the rule is to

³ 2010 2 MhLJ 365.

dispense with impleadment, so that these steps do not come in the way of expeditious disposal. This provision cannot be used to deny rightful impleadment, when such impleadment does not defeat the purpose of the early disposal of suit or in itself can avoid further litigation.”

8. Similarly, Supreme Court of India in case of ***Suresh Kumar and others Vs. Baluram (d) through L.Rs. And another***⁴ observed in paragraph no.9 as under:

“A fair understanding of reading of the rule would make it clear that where two or more persons may sue or be sued in the name of a firm under the provisions of other rules of Order 30 and any such persons die, during the pendency of any suit, it shall not be necessary to join the legal representative’s of the deceased as a party to the suit.”

9. Similar view is reiterated by Supreme Court of India in case of ***Brij Kishore Sharma and Another*** (supra) and by this Court in case of ***Ashish Rajendra Malara*** (supra).

10. Considering the aforesaid exposition of law, in the case of the death of a partner in a proceeding instituted in the name of a partnership firm, it is not necessary to bring legal representatives of the deceased partner on record as parties to the suit. However, legal representatives may, on their own volition, apply to be made parties to the suit.

11. Although prayers are opposed on the ground of delay, this Court holds that no prejudice would be caused to respondents. Hence, following order:

⁴ 2009 2 MPLJ 198.

ORDER

- a. Civil Application is allowed in terms of prayer Clauses (A) and (B).

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/March-2025