



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

WRIT PETITION NO. 9412 OF 2025

**RAMANLAL BABULAL JAIN DIED LRS SUNITA ALIAS
MANGAL AND ANOTHER**

VERSUS

BHASKAR GOVINDRAO GAIKWAD AND OTHERS

...

Mr. Avinash N. Raut, Advocate for the Petitioners.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 05th AUGUST, 2025.**

P.C.:-

1. The petitioners/defendant nos.7-2 and 7-6 in Regular Civil Suit No.150/2013 raises challenge to order dated 13.06.2025, passed by learned Civil Judge Junior Division, Gangapur, District Aurangabad, by which application of plaintiffs, filed below Exhibit-152 seeking exemption from bringing legal representatives of deceased defendant no.7 is allowed.

2. Mr. Avinash Raut, learned Advocate appearing for petitioners submits that Trial Court could not have granted such exemption. On the other hand ought to have directed plaintiffs to serve legal representatives of deceased defendant no.7 by any alternate mode of service or paper publication as may be permissible under law. According to Mr. Raut, this was not case, where exemption could have been granted.

3. Order XXII Rule 4 of Code of Civil Procedure prescribes procedure in case death of one of several defendants or of sole defendant. Sub-Rule (4) states as under:

“[(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing ; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.”

4. Perusal of aforesaid provision shows that where defendant has failed to file his written statement or failed to contest suit at the hearing, in such case notwithstanding death of such defendant, decree can be passed and Court has power to exempt plaintiff from necessity of substituting legal representatives of any such defendant. In present case learned Trial Court observed that defendant no.7 expired at the stage when suit was posted for argument. Immediately, plaintiffs had filed an application for bringing legal representatives of defendant no.7. Some of the legal representatives of defendant no.7 appeared in suit. The record shows that original defendant no.7 has not recorded any evidence.

5. In that view of the matter, plaintiffs filed application invoking provision of Sub-Rule (4) of Rule 4 of Order XXII of Code of Civil Procedure and sought exemption from bring legal

representatives of defendant no.7 on record. The Trial Court rightly exercised his discretion under aforesaid provision and granted exemption to bring on record defendant no.7-1 and 7-4, particularly when other legal representatives of defendant no.7 are already on record.

6. This Court do not find any discrepancies or illegality in exercise of jurisdiction by Trial Court under aforesaid provisions of law. Therefore, there is no merit in writ petition. Writ Petition stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/August-2025