

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10933 OF 2017

Bedil Uttamrao Mane and ors.

...Petitioners

Versus

Balu Shankar Shedge and ors.

...Respondents

Mr. Dhananjayrao Rananaware, for the Petitioners.

Mr. Kirankumar Phakade, a/w Shweta Phakade, for
Respondent No.1.

CORAM: N. J. JAMADAR, J.

DATED: 17th FEBRUARY, 2025

PC:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 21st August, 2017, whereby the application, preferred by the defendant to set aside the “No WS” order and permit the petitioners to file the written statement, came to be rejected.
3. The petitioners are the legal representatives of Uttamrao Nathojirao Mane, the defendant, who passed away in the year 2005. He was the sole defendant. On 27th September, 2010 applications were filed on behalf of the plaintiffs to set aside the abatement of the suit and permit the plaintiffs to bring the legal representatives of the deceased defendant on record.

It seems those applications were allowed by an order dated 13th September, 2016.

4. There is a controversy as to whether, after the petitioners were permitted to be impleaded a legal representatives of the defendant, summons were issued to the petitioners. In fact, *roznama* dated 19th November, 2016, records that the Advocate, who represented the deceased defendant, had filed an application to issue summons to the legal representatives and the said application was rejected. Conversely, it appears that even after the rejection of the said application, the petitioners appeared and filed applications seeking permission to file the written statement and lead evidence. Eventually, the petitioners filed application to set aside the “No WS” order dated 19th November, 2016, which came to be rejected by the impugned order.

5. The learned Counsel for the petitioners submits that the petitioners intended to adopt the written statement filed by the original defendant and had even filed a pursis to that effect. The Trial Court did not permit the petitioners to even adopt the written statement of the deceased defendant.

6. Since the petitioners have been impleaded as the legal representatives of the deceased defendant, they are entitled

to take defences, which are appropriate to their character as the legal representatives of the defendant. In these circumstances, the dictate of justice commands that the petitioners be permitted to adopt the written statement filed on behalf of the deceased defendant and defend the suit.

7. The petition, therefore, stands disposed with the following directions.

(a) The petitioners are permitted to adopt the written statement of deceased defendant as their written statement to the suit.

(b) The petitioners – defendants be permitted to cross-examine the plaintiffs witness(es) and adduce evidence in the rebuttal.

(c) Since the suit is of year 1996, the trial in the suit stands expedited.

(d) The parties, especially the defendants, shall not seek adjournment, save and except in exceptionally unavoidable circumstances.

(e) The learned Civil Judge seized with Regular Civil Suit No.10 of 1996 is requested to hear and decide the suit as

expeditiously as possible and, preferably, within a period of nine months from the date of communication of this order.

Petition disposed.

No costs.

[N. J. JAMADAR, J.]