IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3213 OF 2023

1] Smt. Kashiben Nanalal Thakkar
Since deceased, through L.R.s.

1A] Shri.Navinchandra Nanalal Thakkar
(Since deceased through legal heirs)

1A-i] Heena Navinchandra Thakkar
Age 63 years, Occu-Housewife,
R/o. B/001, Thakurdwar complex,
Near Post Office, Tilak Chowk,
Kalyan West.

1A-ii] Sejal Navinchandra Thakkar
Age 29 years,
R/o. B/001, Thakurdwar complex,
Near Post Office, Tilak Chowk,
Kalyan West.

1A-iii] Sonal Amit Lambole
Age 31 years, Occu-Housewife,
R/o. C-14, 102, Raunak City,
Adharwadi chowk, Kalyan west

1B] Smt. Rupaben Mahendrakumar Jobanputra
Age : 60 years, Occ. Homemaker

1C] Smt. Meenaben Bipinkumar Popat
Age : 55 years, Occ. Household
Respondent No. 1A to 1B
R/o. 001, Ground Floor, B-Wing,
Shri. Thakurdas Complex,
Near Post Office, Tilak Chowk
Kalyan (W), Thane 421 301. ...Petitioners

[Original. LRs. of Defendant No. 1]

Vs.

1] Dilipkumar Pranjeevan Thakkar
(Since deceased through legal heirs)

1.1] ~~[Vijay Dilipkumar Thakkar~~
deleted name as per court order dated 19.8.2016
(Since deceased through legal heirs)

1.1.1] Ms. Drushti Vijay Thakkar
Age 25 years, Occu-Student
R/o.A-204, Asman CHS, Rambaug Lane
No.2, Bhijbal Wadi, Kalyan (W), Dist-Thane

1.2] Ms. Dina Dilipkumar Thakkar
Age 56 years, Occu-Service
R/o.301, Muktidham CHS, Near Jogalekar]
Hospital and Sawali Medical, Jakat Naka, J
Virar (W)-410303.

1.3] Shri. Pradipkumar Dilipkumar Thakkar
Age 55 years, Occu-Business,
R/o. Ganganagar CHS, B-2 Building,
Flat No.4, Lele Aali, Pir Baba Lane,
Bharatacharya Chowk,
Kalyan (W), Dist-Thane-421301.

1.4] Sou. Nilam Umeshkumar Rupareliya
Age 54 years, Occu-Homemaker
R/o. B-12, 2nd Floor, Hare Krushan
Apartment, Sarojini Naidu Road, Bhurabai Hall,
Kandivali (W), Mumbai.

1.5] Sou. Ami Pichurajan
Age 45 years, Occu-Homemaker
R/o. B-402, Vinod Palace, Beturkar Pada,
Kalyan (W), Dist-Thane-421301.

2] Shri. Hasmukhlal Valji Nandu
Age : 45 years, Occu. Household
R/o. Shop No. 1, Ground Floor,

Chandravila Building No. 2,
(Old Badlapur Chawl), Agra Road,
Kalyan (W), Thane 421 301.

3] Hiral Navin Gala,
Age : 35 years, Occ. Business,
R/o. Shop No. 1, Ground Floor,
Chandravila Building No. 2,
(Old Badlapur Chawl), Agra Road,
Kalyan (W), Thane 421 301. ...Respondents
[Original Defendant Nos. 2 and 3]

Adv. Sumedh S. Modak a/w. Adv. Rohi Gogte, for Petitioners.
Adv. Sudharshan P. Bhilare, for Respondent Nos. 1.1.1. to 1.5

CORAM : ARUN R. PEDNEKER, J.
Date : 14th OCTOBER 2026

P.C. :

1. By the present Petition, the Petitioners, who are the legal heirs of the deceased Defendant No. 1, challenge the decision of the Trial Court refusing permission to file a written statement on the ground that the written statement filed by the deceased, i.e. original Defendant No. 1 had been struck off for non compliance of the orders of the Trial Court. It was further held that the present legal heirs of Defendant No. 1 step into the shoes of the deceased Defendant No. 1 and, continue with the same disability as the deceased Defendant No. 1 and therefore, are not entitled to file a written statement.

2. The brief facts giving rise to the present Petition are noted as under :

3. R.C.S. No. 52 of 2005 is filed by the Plaintiff (landlord) against the original Defendant No. 1 (tenant) seeking eviction from the suit premises and recovery of rent on the grounds of sub-letting and arrears of rent.

4. During the pendency of the suit, the Trial Court struck off the defence of Defendant No. 1, as Defendant No. 1 had failed to produce the income-tax returns and books of accounts for the period from 2005 to 2018, as directed by the Court by order dated 07.11.2019 at Exhibit 76.

5. The defence of Defendant No. 1 was struck off for non-compliance with the order below Exhibit 67. Thereafter, Defendant No. 1 expired, and his legal heirs were brought on record as Defendant No. 1/1 to 1/3 (Petitioners herein). The Petitioners filed an application at Exhibit 108 seeking time to file their written statement, citing the non-availability of certain documents. The Plaintiff opposed the application, contending that the legal heirs stand in the shoes of the deceased Defendant No. 1 and have no independent right to file a written statement, since the defence of the deceased original Defendant No. 1 had already been struck off. The Trial Court, by the impugned order, rejected the application at Exhibit 108 seeking time to file the written statement.

6. The Trial Court held that the legal representatives of deceased

Defendant No. 1 steps into the shoes of the deceased Defendant and that the liability incurred by the deceased Defendant No. 1 continues against the legal heirs. As such, the legal heirs cannot be permitted to file a written statement.

7. Challenging the order of the Trial Court, the learned Counsel for the Petitioners submits that, under Order XXII Rule 4(2) of the Code of Civil Procedure, Defendant Nos. 1/1 to 1/3 have a right to file a written statement. In terms of the said provision the legal representatives so brought on record have a right to make any defence appropriate to their character as legal representatives of the deceased original Defendant No. 1. It is also submitted that the summons issued to the legal heirs specifically indicated that the legal heirs were required to file their written statement.

8. Learned Counsel submits that the Trial Court committed an error in not permitting the legal heirs to file a written statement. He relies upon the following judgments:

I) Gopaldas & Co. and others vs. Gopaldas Corporation and others, 2020 SCC OnLine Bom 101.

II) Sumtibai and others vs. Paras Finance Co., (2007) 10 SCC 82.

9. Per contra, learned Counsel appearing for the Respondents, i.e. the original Plaintiff, submits that the Respondents step into the shoes of the

original deceased Defendant and that the disability incurred by the original Defendant would also apply to the legal heirs. The legal heirs of deceased Defendant No. 1 cannot be permitted to overcome the disability or liability incurred by Defendant No. 1. He, therefore, submits that the order passed by the Trial Court is proper and that the Writ Petition be dismissed.

10. Having considered the rival submissions, it is necessary, for ready reference, to set out the relevant provision of the CPC. Order XXII Rule 4(2) of the Code of Civil Procedure,1908, provides as under:

> ***Order XXII Rule 4(2) :***
> *(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.*

11. Undisputedly, in the present case, the defence of Defendant No. 1 was struck off. However, the above noted provision, i.e. Order XXII Rule 4(2) of the CPC, provides that the legal representatives of the deceased, so made parties may make any defence appropriate to their character as legal representatives of the deceased Defendant.

12. This Court, in the case of **Subhash Dhanraj Sankla vs. Kaikhushroo @ Keki Phiroze Noble (since deceased) through his Heirs and L.Rs. Mrs. Zubil P. Noble Dennis, [1] 2020 (5) Mh.L.J. 102** has observed that a legal representative cannot take a defence which is completely at variance with or divergent from the defence taken by the deceased Defendant. It

would imply that a legal representative cannot claim an advantage by taking a defence which the original Defendant himself could not have taken.

13. In view of the rules of pleading and estoppel, the legal representative can only make a defence which is confined to his character as the legal representative of the deceased Defendant. The Court has observed that the legal representatives of the deceased Defendant are not precluded from raising a defence. If the intention of the Legislature was not to permit the legal representative to make any defence where the deceased Defendant had already filed a written statement, the defence of the deceased Defendant would stand frozen, and Sub-rule (2) would not have provided that the legal representative may make any defence appropriate to his character as the legal representative.

14. This Court has held that the legal representatives who are impleaded upon the demise of the Defendant are entitled to make a defence and tender an additional written statement. The legal representatives are, however, permitted to raise a defence which is confirmative with their character as the legal representatives of the deceased Defendant. It is not open to the legal representatives to take a defence which is divergent from or contrary to the defence raised by the deceased Defendant. This proposition, however, cannot be stretched to such an extreme that, notwithstanding the facts of the case,

the legal representatives are precluded from taking a defence based on their independent right.

15. In the instant case, the Court finds that the defence of Defendant No. 1 was struck off by the order dated 07.11.2019. The legal heirs of Defendant No. 1 would also face the same disability as that faced by Defendant No. 1. However, if the legal heirs have any independent right beyond what they claim in their capacity as legal heirs of Defendant No. 1, they are entitled to file a written statement to that extent, and not beyond.

16. This can be gathered from the judgment of the Hon'ble Supreme Court in the case of **Sumtibai and Others vs. Paras Finance Co.**, (2007) 10 SCC 82, wherein it has been observed that the legal heirs of the deceased Defendant had an independent right as co-owners of the property *qua* the land in respect of which an agreement had been executed by the original deceased Defendant. Thus, the legal heirs also had an independent right to file a written statement and defend their claim, apart from the fact that they were also stepping into the shoes of the original deceased Defendant.

17. In the instant case, the legal heirs have not shown that they have any independent right or defence in the suit. They are claiming their rights only in their capacity as the legal heirs of the deceased Defendant. Thus, the disability of the deceased Defendant would also apply to the legal heirs.

18. In view of the above, no case is made out for interference. Accordingly, the Writ Petition is dismissed.

(ARUN R. PEDNEKER, J.)

19. After the order is pronounced, learned Counsel for the Petitioner seeks extension of the interim relief granted by this Court. The interim relief would granted earlier continue for a period of three weeks.

(ARUN R. PEDNEKER, J.)

SUFIYAN EHTESHAM SYED

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