IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 38675 OF 2025
IN
FIRST APPEAL (ST) NO. 38079 OF 2025

Raj Kumar Seth Since Deceased Thr His Lrs. ...Applicants/Appellants
Versus
Ellora Silk Mills Pvt Ltd And Ors. ...Respondents

WITH
INTERIM APPLICATION NO. 38676 OF 2025
IN
FIRST APPEAL (ST) NO. 38079 OF 2025

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Versus
Ellora Silk Mills Pvt Ltd And Ors. ...Respondents

WITH
FIRST APPEAL (ST) NO. 38079 OF 2025

Mr. Aadil Parsurampuria, a/w Adv. Mehul Rathod, Adv. Darshan Vora, for the Appellant.
Mr. Darshit K. Jain, a/w Mr. Udit Raghuwanshi i/b. Divya D. Jain, for Respondent Nos. 1, 2B, 2C, 3 and 4.

CORAM : R. I. CHAGLA AND
ADVAIT M. SETHNA, JJ.

DATED : 24 APRIL, 2026

P.C.:-

1. The present First Appeal has been preferred by the Appellants challenging the order dated 30 September 2025 passed by the learned

Judge of the City Civil Court, Mumbai, whereby the Chamber Summons filed by the Appellants (proposed Plaintiffs) seeking substitution in place of the Original Plaintiff came to be rejected.

2. The Original Plaintiff expired on 30 January 2019, and the proposed Plaintiff, who filed the Chamber Summons as a legal representative, sought to be joined as a Plaintiff in the proceedings.

3. Defendant No. 2(c) contested the Chamber Summons by filing a reply, contending that the right to sue does not survive and, therefore, the Chamber Summons ought to be rejected.

4. The suit filed by the Original Plaintiff, being Suit No. 1384 of 1996, was instituted in his capacity as Managing Director for life of Defendant No. 1 - Company, which is a Private Limited Company. The Plaintiff and Defendant No. 2 were brothers, and Defendant Nos. 3 and 4 are the sons of Defendant No. 2. Defendant Nos. 2 to 5 are stated to be Businessmen. Defendant No. 5 is neither related to the Plaintiff nor to the other Defendants.

5. The learned Judge, who passed the impugned order dated 30 September 2025, observed that the suit filed by the Original Plaintiff sought relief in the nature of a declaration that the Plaintiff was entitled to act as Managing Director of Defendant No. 1 - Company, and the other reliefs were consequential to such capacity. The learned Judge accordingly held that, although there were other consequential prayers, including a prayer for rendering of accounts from Defendant Nos. 2 to 5, such relief was not against Defendant No. 1 - Company and could only be sustained if the Original Plaintiff was Managing Director of Defendant No. 1 - Company, otherwise, he would have no locus to seek such relief.

6. The learned Judge further held that the proposed Plaintiffs could never claim a right to be appointed or joined as Managing Director of Defendant No. 1 - Company, and therefore, they were not entitled to any consequential reliefs claimed by the Original Plaintiff in the plaint. The suit concerns a personal right to an office held by the Original Plaintiff, and upon his death, the right to sue does not survive. Accordingly, the Chamber Summons was rejected on the ground that the Proposed Plaintiff was not entitled to be joined as a Plaintiff by substituting the name of the Original Plaintiff.

7. Learned counsel appearing for the Appellants has referred to the Prayers in the Plaint and submitted that the reliefs could have been sought by the Original Plaintiff in his capacity as a shareholder of Defendant No. 1. He submitted that there was a Prayer for disclosure of transactions and rendering of accounts relating to dealings in the current account belonging to Defendant No. 1 - Company, and for a decree against Defendant Nos. 2 to 5, or any one or more of them, for any amount wrongfully misapplied or utilized by them from the said account for purposes other than the benefit of Defendant No. 1.

8. He also referred to other Prayers seeking recovery of amounts from companies and creditors, and for which he sought joinder with Defendant No. 2 in instituting such relief.

9. Learned counsel for the Appellants further submitted that the Plaintiff had averred in the Plaint that he was a shareholder and that the shares had been deposited with one Brij Lal R. Mehra along with the Plaintiff, though ownership of the shares remained with the Plaintiff, who was entitled to exercise all rights as owner of the shares and to continue as such.

10. Learned counsel for the Appellants has accordingly submitted that the proposed Plaintiffs would have a right to step into the shoes of the Original Plaintiff, particularly in view of the cause of action and the survival of the right to sue, the suit being filed by the Original Plaintiff in his capacity as shareholder.

11. Learned counsel for the Appellants has accordingly sought for setting aside of the order dated 30 September 2025.

12. Learned counsel for the Respondents opposed the First Appeal on the ground that the Original Plaintiff had sought a declaration of his right to act as Managing Director of Defendant No. 1 - Company, and in view of the primary relief sought, the Suit was based on the personal right to an office. Upon the death of the Original Plaintiff during the pendency of the Suit, the right to sue would not survive, and the Suit would therefore abate. He has placed reliance on the judgment of the Patna High Court in ***Ramsarup Das and Ors vs. Rameshwar Das and Ors.***[1], in this context.

13. Learned counsel for the Respondents submitted that the consequential Prayers in the Suit stem from the primary prayer for declaration that the Plaintiff is entitled to act as Managing Director, and in the absence of such declaration, the consequential reliefs cannot be granted. He has submitted that a bare reading of the consequential Prayers shows that there is no Prayer claiming monies due to the Plaintiff; in fact, even Prayer clause (G) for rendering of accounts from Defendant Nos. 2 to 5 is for the benefit of Defendant No. 1 - Company, in light of allegation that Defendant Nos. 2 to 4, or any one or more of them, wrongfully applied amounts from the Company's account.

14. Having considered the submissions, we find considerable merit in the case of the Respondents. Upon the demise of the Original Plaintiff on 30 January 2019 during the pendency of the Suit, the right to sue, in our view, does not survive. The Suit was filed by the Original Plaintiff in his capacity as Managing Director of Defendant No. 1 - Company, seeking a declaration to that effect. The other prayers in the suit were consequential and could only be granted if the Original Plaintiff was declared as Managing Director of Defendant No. 1 - Company, which did not take place, in the given facts. This would also be applicable to the prayers sought for rendering of

1. (AIR 1950 Pat 184, decided 26 Sept 1949)

accounts against Defendant Nos. 2 to 5 on the allegation that defendant Nos. 2 to 5 have wrongly applied/utilized amounts from the account of the Defendant No. 1 - Company which would be otherwise for the benefit of the first Defendant Company.

15. The contention on behalf of the Appellants that the Original Plaintiff sued in his capacity as a shareholder of Defendant No. 1 - Company is, in our view, misconceived. The factual position being that the Original Plaintiff had transferred his shares for which transfer forms have been executed. Inspite of this the Original Plaintiff has alleged that the shares were deposited with the said Brij Lal R. Mehra and that he continued to be a shareholder, without seeking any Prayer in respect thereof.

16. Accordingly, we find no infirmity in the impugned judgment and order dated 30 September 2025, which holds that the proposed Plaintiff cannot claim to be joined as Managing Director of Defendant No. 1 - Company and, consequently, is not entitled to the consequential reliefs claimed by the Original Plaintiff.

17. The judgment of the Patna High Court in ***Ram Swaroop Das*** (supra) is apposite. The Court held that where a suit is primarily to establish a personal right to an office, which entitles the Plaintiff to possession of property, upon his death during the pendency of the suit or appeal, the right to sue does not survive, and the suit abates.

18. In the present case, having held that the Original Plaintiff’s Suit was for a declaration claiming him to be the Managing Director of Defendant No. 1 - Company, the right to sue does not survive upon his death.

19. Accordingly, we do not find any merit in the First Appeal. The First Appeal is therefore dismissed, with no order as to costs. Interim Applications, if any, would not survive and are also disposed of.

[ADVAIT M. SETHNA, J.] **[R.I. CHAGLA, J.]**