

# IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 485 OF 2003

MISS FELICIANA  
SILVEIRA,CURTORIM,SALCETE-GOA.

....Petitioners

Versus

SHRI JOSE DIAS AND 10 ORS.,

....Respondents

SHRI ZELLER DE SOUZA,SHRI A.D. BHOBE

Coram:- A.M.KHANWILKAR, J.

Date:- 29th November, 2003

Heard both sides.

Three contentions have been raised before me. Firstly, it is argued that the Suit as filed by the respondents was against a dead person and such a Suit is a nullity. It is submitted that if the Suit is a nullity, any order passed therein will also be a nullity and the mistake which has been committed by the respondents while instituting the Suit is incurable. Reliance is placed on the decisions of our High Court reported in A.I.R. 1953 Bombay, 357 in the case of Mahalu Shidappa v. Shankar Dadu and others, A.I.R. 1937 Bombay, 401 in the case of H.H.Darbar Alabhai Vajsurbhai and others v. Bhura Bhaya and others and in A.I.R. 1924 Bombay, 109 in the case of Rampratab Brijmohandas and others v. Gavrishankar Kashiram.

Per contra, counsel for the respondents contends that the question raised by the petitioner is squarely answered by the decision of the Apex Court reported in *Karuppaswamy and others v. C. Ramamurthy*, A.I.R. 1993 S.C., 2324. I have no hesitation in accepting this submission advanced on behalf of the respondents. In that case also the Suit was filed against the sole defendant who had died before the institution of the Suit. The Apex Court, while considering similar argument, has rejected the same as can be discerned from paragraph 5 of the said decision. Even the Court below has proceeded in the matter on the above premise. In the circumstances, I find no substance in the first contention.

It is next contended that the decision relied upon by the respondents in *A.I.R. 1993 S.C., 2324 (Supra)* will be relevant only when the issue of limitation would arise on the impleadment of the heirs of the deceased defendant. Such is not the case on hand. Even this submission does not commend to me. On the other hand, to my mind, the principle expounded by the Apex Court cannot be confined only when the issue of limitation arises in a given case, but would equally apply to other cases. To my mind, when the issue of limitation does not arise then there should be no

inhibition in permitting the Plaintiff to bring on record the heirs of deceased Defendant. For it will be only a matter of technical formality as the remedy to sue remains intact.

It is lastly contended that in any case the cause as was required to be made out for showing indulgence to the respondents namely, mistake made in good faith, has not been made out by the respondents. It is submitted that the application as filed by the respondents itself reveals that the respondents had knowledge about the death of the original defendant before institution of the Suit and, in such a situation, it is not possible to even suggest that it is a mistake in good faith in impleading the deceased defendant. I find no substance in this argument as well. The application preferred by the respondents is at page 21 which will have to be read as a whole. The argument of the petitioner, on the other hand, is founded only on averments in paragraph 1. That course is not open. Whereas on reading the application as a whole, it is clearly asserted by the respondents that they acquired knowledge about the death of the defendant only after getting the Bailiff's Report and soon thereafter steps were taken to amend the records. That plea taken on behalf of the respondents has found favour with

the Court below. The Court below has recorded reasons for taking that view which, in my opinion, merits no interference in exercise of writ jurisdiction.

Accordingly, there is no substance in this Writ Petition. Hence dismissed.

A.M.KHANWILKAR, J.