

**Vinayak Purshottam Dube (Deceased), Through Lrs
v.
Jayashree Padamkar Bhat & Others**

(Civil Appeal Nos. 7768-7769 of 2023)

01 March 2024

[B.V. Nagarathna* and Ujjal Bhuyan, JJ.]

Issue for Consideration

Appellants, legal representatives of the original opposite party-a sole proprietor (since deceased) who had entered into a Development Agreement with the respondents-complainants, if liable to discharge the obligations which had to be discharged by him in his personal capacity based on his skills and expertise.

Headnotes

Consumer Protection – Legal representatives of sole proprietor-developer (since deceased), if liable for personal contract of the deceased – Contract Act, 1872 – ss.37, 40 – Code of Civil Procedure, 1908 – s.2(11) – Sole proprietor-developer entered into a Development Agreement with the respondents-complainants – Complainants alleged failure to fulfill payment obligations, breaches of the agreement including deviations from sanctioned plan, non-construction of a compound wall, etc. – Sole proprietor died during the pendency of the matter before NCDRC – NCDRC held that appellants-legal representatives of the sole proprietor were liable both w.r.t the monetary payments that he was directed to pay and also to comply with the other directions issued – Appellants, if liable to comply with obligations such as construction to be made and certain approvals etc. to be obtained on completion of the construction which had to be performed by sole proprietor-developer in his personal capacity based on his skills and expertise:

Held: s.37, Contract Act states that a promise made by a promisor is binding on his representatives in case of his/her death, unless a contrary intention appears from the contract – Legal representatives are liable for the debts of their predecessor, but their liability is limited to the extent of the estate of the deceased inherited by them – Thus, the representatives of a promisor are bound to perform

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the promisor's contract to the extent of the assets of the deceased falling in their hands – But they are not personally liable under the contracts of the deceased and are also not liable for personal contracts of the deceased – When personal considerations are the basis of a contract they come to an end on the death of either party, unless there is a stipulation express or implied to the contrary – This is especially so when the contracts involve exercise of special skills such as expressed in s.40, Contract Act – A contract involving exercise of individual's skills or expertise of the promisor or which depends upon his/her personal qualification or competency, the promisor has to perform the contract by himself and not by his/her representatives – s.2(11), CPC defines a “legal representative – Legal representatives of a deceased are liable only to the extent of the estate which they inherit – Where the decree or order is not against the estate of a deceased sole proprietor but based on the skills and expertise of the sole proprietor, the obligations which had to be performed by the sole proprietor would come to an end on his demise and the same cannot be imposed on his legal heirs or representatives – Such a position is distinguished from a position where the estate of the deceased sole proprietor would become liable to satisfy the decree in monetary terms as a proprietorship firm is not a separate legal entity as compared to the proprietor and his estate would become liable only to satisfy a decree or an order in monetary terms on his demise – In the case of a personal obligation imposed on a person under the contract and on the demise of such person, his estate does not become liable and therefore, the legal representatives who represent the estate of a deceased would obviously not be liable and cannot be directed to discharge the contractual obligations of the deceased – Legal representatives of the deceased opposite party-appellants not liable to discharge the obligation which had to be discharged by the deceased opposite party in his personal capacity and hence that portion of the impugned orders of the NCDRC, State Commission and District Forum are set aside. [Paras 20, 21, 23, 24, 27, 31]

Proprietary concern – Jurisprudential status – Discussed.

Legal right – Characteristics of, according to Salmond – Salmond's classification of proprietary and personal rights; inheritable and uninheritable rights – Discussed.

Contract – Contract of service, personal to the promisor and on his death he is discharged from the contract:

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Held: A contract of service is also personal to the promisor – This is because when a person contracts with another to work or to perform service, it is on the basis of the individual’s skills, competency or other qualifications of the promisor and in circumstances such as the death of the promisor he is discharged from the contract – Correspondingly, duties or obligations which are personal in nature cannot be transmitted from a person who had to personally discharge those duties, on his demise, to his legal representatives – Just as a right is uninheritable and the right personal to him dies with the owner of the right, similarly, a duty cannot be transferred to the legal representatives of a deceased if the same is personal in nature. [Paras 21, 22]

Code of Civil Procedure, 1908 – s.50:

Held: Any decree which is relatable to the extent of the property of the deceased which has come to the hands of the legal representatives and has not been duly disposed of, the same would be liable for execution by a decree holder so as to compel the legal representatives to satisfy the decree – In this context, even a decree for preventive injunction can also be executed against the legal representatives of the deceased judgment-debtor if such a decree is in relation to the property or runs with the property if there is a threat from such legal representatives. [Para 30]

Words and expressions – “legal representative” – Code of Civil Procedure, 1908 – s.2(11) – Discussed. [Para 23]

Case Law Cited

Raghu Lakshminarayanan v. Fine Tubes, [\[2007\] 4 SCR 885](#) : (2007) 5 SCC 103; *Ajmera Housing Corporation vs. Amrit M. Patel (Dead) through LRs*, (1998) 6 SCC 500 – relied on.

Custodian of Branches of Banco National Ultramarino vs. Nalini Bai Naique, [\[1989\] 2 SCR 810](#) : AIR 1989 SC 1589 – referred to.

Books and Periodicals Cited

Report of the Insolvency Law Committee, Page No.117-118, Government of India (Ministry of Corporate Affairs, February, 2020); PJ Fitzgerald, Salmond on Jurisprudence, Page Nos.220, 221 (Universal Law Publishing Co. Pvt. Ltd., 12th Edition, 1966) – referred to.

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List of Acts

Contract Act, 1872; Code of Civil Procedure, 1908; Indian Succession Act, 1925.

List of Keywords

Consumer Protection; Legal representatives; Personal liability for personal contracts of the deceased; Obligations to be discharged in personal capacity; Development Agreement; Sole proprietor; Special skills; Expertise; Contract of service; Personal obligation; Injunction; Vinculum juris.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7768-7769 of 2023

From the Judgment and Order dated 02.05.2018 of the National Consumers Disputes Redressal Commission, New Delhi in RA Nos. 26 and 27 of 2017

Appearances for Parties

Aniruddha Deshmukh, Adv. for the Appellants.

Abhishek Yadav, Ruchit Mohan, Braj Kishore Mishra, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Nagarathna, J.

These appeals have been filed by the legal representatives of the opposite party-sole proprietor against the common final judgment and order dated 02.05.2018 passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as “NCDRC”) in Review Application No.26 of 2017 in Review Petition No.3283 of 2008 and Review Application No.27 of 2017 in Review Petition No.2794 of 2008.

The NCDRC *vide* the impugned order dismissed the review applications while affirming its earlier order dated 31.05.2016 passed in review petition with reference to the order dated 03.01.2017 passed by this Court in Special Leave Petition (Civil)... CC Nos.24515-

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24516 of 2016 granting liberty to the appellants to resort to remedy of review before the NCDRC.

2. The brief facts giving rise to the present appeal are as follows:
 - 2.1 The appellants herein are the legal heirs of the original opposite party in the consumer complaint before the District Forum. All the respondents herein are the complainants.
 - 2.2 For the sake of convenience, the parties shall be referred to as complainants and opposite party.
 - 2.3 The complainants, Jayashree Padmakar and others, owners of property CTS Nos.1465/1 and 1465/2, 'C' Ward, Kolhapur, had entered into a Development Agreement dated 30.07.1996 with the opposite party. According to the agreement, the complainants were entitled to receive eight residential flats and Rs.6,50,000/- as consideration. Allegedly, the opposite party failed to fulfill the payment obligations, resulting in payment of a balance amount and accruing interest at 18% per annum with effect from 01.04.1997. The complainants alleged breaches of the agreement, including deviations from sanctioned plan, non-construction of a compound wall impacting parking and issues regarding access and unauthorized constructions beyond sanctioned plan, subsequently sold to third parties. They also noted defects in the building construction, such as cracks, in the building, terrace work being not completed and the absence of provision for electricity meters. Despite notices issued by the complainants, the opposite party denied the allegations asserting that the complainants owed them Rs.8,60,000/- for construction and amenities.
 - 2.4 Seeking a resolution of the ongoing breaches under the Consumer Protection Act, the complainants pursued their legal recourse to address the deadlock by filing Complaint No.184 of 2005 before the District Consumer Forum, Kolhapur. Their prayers for relief were several: they demanded payment of outstanding dues inclusive of interest; reimbursement of expenses incurred and compensation for the mental distress caused to them. Additionally, they sought structural rectification, emphasizing on the removal of unauthorized constructions; rectification of construction defects; completion of pending work

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and the provision of essential amenities as initially agreed upon.

- 2.5 In his version, the original opposite party disputed the existence of any consumer relationship, denied breaches and argued for the resolution of contractual disputes through the civil court. The opposite party claimed that the complaint was time-barred and sought its dismissal with compensatory costs of Rs.10,000/-.
- 2.6 The District Consumer Forum at Kolhapur, *vide* order dated 16.10.2006, on perusal of various supporting documents, including the Development Agreement, building plans, notices, replies, certificates, estimates, receipts and affidavits partly allowed the Consumer Complaint No.184 of 2005 filed against the opposite party. The District Forum observed that as per the Development Agreement between the parties, the transaction between the parties was not one of sale and purchase of property but of development of property. Since the services regarding construction are covered by the Consumer Protection Act, the dispute was held to be a consumer dispute. Further, the District Forum refused to take into consideration the points raised by the complainants regarding defects in construction, amenities and facilities due to lack of evidence provided in that regard. However, the opposite party was found to be liable to pay to the complainants an amount of Rs. 1,65,000/- along with interest at the rate of 18% per annum with effect from 01.05.1997 till payment; an amount of Rs. 1,85,000/- along with interest at the rate of 18% per annum with effect from 31.08.1997 till payment; and an amount of Rs.1,50,000/- at the time of conveyance.
- 2.7 Both the parties challenged the order of the District Forum before the Consumer Disputes Redressal Commission, Maharashtra State, Mumbai (for short, "the State Commission"). The State Commission, *vide* its common judgment dated 08.04.2008 in First Appeal Nos.2570 of 2006 and 1115 of 2007, partly modified the order of the District Forum by setting aside the directions to pay Rs. 1.85 lakhs and Rs. 1.65 lakhs as the said claims were held to be time-barred but upheld the direction to pay Rs. 1.5 lakhs. However, the State Commission placed reliance on some other clauses of the Development Agreement such as clause 4(k), to hold that the building was incomplete and that the opposite party was liable to get the construction of the

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compound wall and give separate access in terms of Schedule-II of the Development Agreement. The opposite party was further directed to obtain and handover the Completion Certificate to the complainants; to execute the Conveyance Deed and to give electricity connections to the complainants for which they had already paid Rs.15,000/- to the developer-opposite party.

- 2.8 The complainants as well as the opposite party approached the NCDRC by filing Revision Petition Nos.3283 of 2008 and 2794 of 2008. During the pendency of the petition before the NCDRC, the original opposite party-Vinayak Purushottam Dube died and his legal representatives i.e., his wife and two sons were brought on record, who are the appellants before this Court. The NCDRC, *vide* order dated 31.05.2016, again partly modified the order of the State Commission. The NCDRC disagreed with the finding and conclusion of the State Commission with respect to the time-barred transaction of Rs. 1.85 lakhs and Rs. 1.65 lakhs, by observing that the limitation of the said claims had to be adjudged by looking at the transaction between the parties as a whole, which established a continuous cause of action in the matter. The NCDRC upheld the directions given by the State Commission with respect to the Completion Certificate; Conveyance Deed; Electricity Connection, etc., since the developer did not challenge any part of those directions as the same were in accordance with the Development Agreement. In other words, the NCDRC upheld the order of payment of 1.65 lakhs and 1.85 lakhs along with interest as directed by the District Forum, and also upheld the slew of directions issued by the State Commission to the developer-opposite party.
3. The appellants-opposite party thereafter approached this Court by preferring Special Leave Petition (Civil).... CC Nos.24515-24516 of 2016 to challenge the order of the NCDRC dated 31.05.2016 in Revision Petition Nos.3283 of 2008 and 2794 of 2008. This Court, *vide* order dated 03.01.2017, refused to interfere with the view taken by the NCDRC and disposed of the same by granting liberty to the appellants-opposite party herein to resort to the remedy of review before the National Commission.
4. Thereafter, the appellants-opposite party filed Review Application No.26 of 2017 and the complainants filed Review Application No.27

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of 2017, both before the NCDRC and the order of review proceeding is assailed in the present case. The NCDRC, *vide* order dated 02.05.2018, upheld its earlier findings on the question of limitation, status of complainants as consumers and the relief being in excess of the payment made by the complainants. Further, NCDRC refused to accept the contention of the appellants-opposite party that after the death of the original owner, the legal representatives are not accountable for the liabilities under the agreement. In paragraph 12 of the order, the NCDRC held that the death of a developer has no effect upon the obligations of the developer under the Development Agreement and the same have to be executed by the legal heirs of the developer. The relevant part of the said paragraph 12 is extracted as under:

“12. Further, we have no reason to agree with the contention raised by the review applicant that after the death of the original owner, the legal representatives are not accountable for the liabilities under the agreement. In the eventuality of death of the developer, it cannot be stated that various clauses of the development agreement between the parties becomes redundant or the complainant is not entitled to seek execution of the provisions of the development agreement. Such execution has to be made by the legal heirs of the developer only.”

5. The legal representatives of the opposite party being aggrieved by the aforesaid reasoning of the NCDRC have preferred these appeals.
6. We have heard learned counsel Sri Aniruddha Deshmukh for the appellants and learned counsel Sri Abhishek Yadav for the respondents and perused the material on record.
7. The controversy in these appeals is in a very narrow compass. No doubt, the complainants succeeded before the District Forum, the State Commission as well as the NCDRC. During the pendency of the revision preferred by the original opposite party before the NCDRC, the original opposite party died. His legal representatives i.e. his widow and two sons were brought on record. In fact, the complainants also had preferred their Revision Petition. The NCDRC reasoned that the legal representatives of the opposite party were liable both with regard to the monetary payments that the original opposite party was directed to pay and also liable to comply with

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the other directions issued by the District Forum as modified by the State Commission and thereafter modified by the NCDRC.

8. Learned counsel for the appellants submitted that the appellants as the legal representatives of the deceased opposite party are willing to make the payment as directed. But as far as the other set of the directions are concerned, it is not permissible for them to comply with them inasmuch as the said directions were issued by the District Forum as well as the State Commission personally against the opposite party who is since deceased. Those directions are with regard to construction of compound wall so as to give separate access in terms of Schedule II of the Development Agreement; to obtain and handover completion certificate to the complainants-respondents; to execute the conveyance deed and to give electricity connection and such other directions.
9. Learned counsel for the appellants contended that the aforesaid directions cannot now be complied with by the legal representatives of the deceased - original opposite party inasmuch as those were personal directions as issued against the original opposite party. He contended that the original opposite party was having the proprietorship concern and therefore, the estate of the deceased proprietor would be liable insofar as the satisfaction of the compensatory payments only but not for complying the other directions issued which cannot now fall on his legal representatives to comply. It was contended that the original opposite party had skills and expertise to comply with the said directions as a developer but on his demise, his legal representatives, namely, his widow and two sons, cannot be compelled to carry out those directions as they neither possess the necessary skills nor expertise and further, they are not continuing the proprietorship concern of the original opposite party which has now been wound up on the demise of the sole proprietor. Therefore, learned counsel for the appellants-opposite party contended that the various clauses of the Development Agreement which had placed duties and obligations on the original opposite party, who is since deceased, cannot now be enforced against and performed by his legal representatives or heirs.
10. *Per contra*, learned counsel for the complainants-respondents submitted that no doubt the legal representatives of the original opposite party would comply with the directions for payments from

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out of the estate of the deceased opposite party but the complainants would be left high and dry insofar as the other obligations which had to be discharged by the opposite party and therefore, the NCDRC was justified in directing the legal representatives of the deceased opposite party to take steps for also complying with those directions.

11. Having heard learned counsel for the respective parties, we note that admittedly the original opposite party was in the business of real estate and as a developer, had entered into the Development Agreement dated 30.07.1996 with the complainants. According to the complainants-respondents herein, they were entitled to eight residential flats and there were various other terms and conditions of the said Development Agreement which imposed an obligation on the original opposite party.
12. The question is: what would happen to the obligations imposed personally on the original opposite party on his demise? No doubt, the estate of the original opposite party would be liable for any monetary decree or directions for payment issued in the present case. However, what about the obligations which had to be performed under the Development Agreement such as certain construction to be made and certain approvals etc. to be obtained by him on completion of the construction. Can the legal representatives be liable to comply with those obligations under the Development Agreement on the demise of the original opposite party?
13. In this regard, it is necessary to discuss the jurisprudential status of a proprietary concern. In a report of the Insolvency Law Committee submitted in February, 2020, the definition of 'Proprietorship Firms' reads as under:

“2. DEFINITION OF ‘PROPRIETORSHIP FIRMS’

2.2 Proprietorship firms are businesses that are owned, managed and controlled by one person. They are the most common form of businesses in India and are based in unlimited liability of the owner. Legally, a proprietorship is not a separate legal entity and is merely the name under which a proprietor carries on business. [[*Raghu Lakshminarayanan vs. Fine Tubes* \(2007\) 5 SCC 103.](#)]

Due to this, proprietorships are usually not defined in statutes. Though some statutes define proprietorships,

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such definition is limited to the context of the statute. For example, Section 2 (haa) of the Chartered Accountants Act, 1949 defined a 'sole proprietorship' as "an individual who engages himself in practice of accountancy or engages in services...". Notably, 'proprietorship firms' have also not been statutorily defined in many other jurisdictions."

[**Source:** Report of the Insolvency Law Committee, Page No.117-118, Government of India (Ministry of Corporate Affairs, February, 2020).]

14. According to Salmond, there are five important characteristics of a legal right:

1. It is vested in a person who may be distinguished as the owner of the right, the subject of it, the person entitled, or the person of inherence.
2. It avails against a person, upon whom lies the correlative duty. He may be distinguished as the person bound, or as the subject of duty, or as the person of incidence.
3. It obliges the person bound to an act or omission in favour of the person entitled. This may be termed the content of the right.
4. The act or omission relates to something (in the widest sense of that word), which may be termed the object or subject matter of the right.
5. Every legal right has a title, that is to say, certain facts or events by reason of which the right has become vested in its owner.

[**Source:** PJ Fitzgerald, Salmond on Jurisprudence, Page No.221 (Universal Law Publishing Co. Pvt. Ltd., 12th Edition, 1966)]

15. Salmond also believed that no right can exist without a corresponding duty. Every right or duty involves a bond of legal obligation by which two or more persons are bound together. Thus, there can be no duty unless there is someone to whom it is due; there can be no right unless there is someone from whom it is claimed; and there can be no wrong unless there is someone who is wronged, that is to say, someone whose right has been violated. This is also called as *vinculum juris* which means "a bond of the law". It is a tie that legally binds one person to another. [**Source:** PJ Fitzgerald, *Salmond*

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on Jurisprudence, Page No.220 (Universal Law Publishing Co. Pvt. Ltd., 12th Edition, 1966)].

16. Salmond's classification of proprietary and personal rights are encapsulated as under:

	Proprietary Rights	Personal Rights
1	Proprietary rights means a person's right in relation to his own property. Proprietary rights have some economic or monetary value.	Personal rights are rights arising out of any contractual obligation or rights that relate to status.
2	Proprietary rights are valuable.	Personal rights are not valuable in monetary terms.
3	Proprietary rights are not residual in character.	Personal rights are the residuary rights which remain after proprietary rights have been subtracted.
4	Proprietary rights are transferable.	Personal rights are not transferable.
5	Proprietary rights are the elements of wealth for man.	Personal rights are merely elements of his well-being.
6	Proprietary rights possess not merely judicial but also economic importance.	Personal rights possess merely judicial importance.

[**Source:** PJ Fitzgerald, *Salmond on Jurisprudence*, Page No.238 (Universal Law Publishing Co. Pvt. Ltd., 12th Edition, 1966)].

17. Salmond's classification of inheritable and uninheritable rights is stated as under:

Inheritable Rights	Uninheritable Rights
A right is inheritable if it survives the owner.	A right is uninheritable if it dies with the owner.

[**Source:** PJ Fitzgerald, *Salmond on Jurisprudence*, Page Nos.415 & 442 (Universal Law Publishing Co. Pvt. Ltd., 12th Edition, 1966)].

18. On a reading of the above, it is clear, when it comes to personal rights (as opposed to a proprietary rights) are rights arising out of any

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contractual obligations or the rights that relate to status. Such personal rights are not transferable and also not inheritable. Correspondingly, Section 306 of the Indian Succession Act, 1925 (for short, “1925 Act”) applies the maxim “*actio personalis moritur cum persona*” (a personal right of action dies with the person) which is limited to a certain class of cases and would apply when the right litigated is not heritable. By the same logic, a decree holder cannot enforce the same against the legal representatives of a deceased judgment debtor unless the same survives as against his legal representatives. Section 306 of the 1925 Act reads as under:

“Section 306 – Demands and rights of action of or against deceased survive to and against executor or administrator.—

All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in *favor of or against* a person at the time of his decease, survive *to and against* his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, 1860 (45 of 1860) or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.”

19. We may also advert to Sections 37 and 40 of the Indian Contract Act, 1872, which read as under:-

“37. Obligation of parties to contracts.—The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

x x x

40. Person by whom promise is to be performed.—If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained

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in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.”

20. Section 37 of the aforesaid Act states that a promise made by a promisor is binding on his representatives in case of his/her death, unless a contrary intention appears from the contract. Legal representatives are liable for the debts of their predecessor, but their liability is limited to the extent of the estate of the deceased inherited by them. Therefore, the representatives of a promisor are bound to perform the promisor's contract to the extent of the assets of the deceased falling in their hands. But they are not personally liable under the contracts of the deceased and are also not liable for personal contracts of the deceased. Therefore, when personal considerations are the basis of a contract they come to an end on the death of either party, unless there is a stipulation express or implied to the contrary. This is especially so when the contracts involve exercise of special skills such as expressed in Section 40 of the Indian Contract Act, 1872.
21. Thus, a contract can be performed vicariously by the legal representatives of the promisor depending upon the subject matter of the contract and the nature of performance that was stipulated thereto. But a contract involving exercise of individual's skills or expertise of the promisor or which depends upon his/her personal qualification or competency, the promisor has to perform the contract by himself and not by his/her representatives. A contract of service is also personal to the promisor. This is because when a person contracts with another to work or to perform service, it is on the basis of the individual's skills, competency or other qualifications of the promisor and in circumstances such as the death of the promisor he is discharged from the contract.
22. Correspondingly, duties or obligations which are personal in nature cannot be transmitted from a person who had to personally discharge those duties, on his demise, to his legal representatives. Just as a right is uninheritable and the right personal to him dies with the owner of the right, similarly, a duty cannot be transferred to the legal representatives of a deceased if the same is personal in nature.

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In *Raghu Lakshminarayanan vs. Fine Tubes, (2007) 5 SCC 103*, while distinguishing a juristic person such as a company, a partnership or an association of persons from a proprietary concern, it was observed that a person who carries on business in the name of a business concern, but he being a proprietor thereof, would be solely responsible for conduct of its affairs. A proprietary concern is not a company. Further, a proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business which is by representing the estate of the deceased proprietor. The real party who is being sued is the proprietor of the said business. Therefore, if a proprietor had to carry on certain obligations personally under a contract, the same cannot be fastened on his legal representatives.

23. Further, Section 2(11) of the Code of Civil Procedure, 1908 (for short, "CPC") defines a "legal representative" to mean a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Thus, the legal representatives of a deceased are liable only to the extent of the estate which they inherit.

In *Custodian of Branches of Banco National Ultramarino vs. Nalini Bai Naique, AIR 1989 SC 1589*, it was observed that the expression "legal representative" as defined in the CPC is applicable to proceedings in a suit. It means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The definition is inclusive in character and its scope is wide as it is not confined to legal heirs only, instead, it stipulates a person who may or may not be a heir, competent to inherit the property of the

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deceased or he should represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title, either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression "legal representative". If there are many heirs, those in possession bona fide, without there being any fraud or collusion, are also entitled to represent the estate of the deceased.

24. The aforesaid judgment refers to representation of an estate of a deceased person which would devolve on his legal representatives and where the decree has to be executed *vis-à-vis* such an estate. In such a case, the heirs of the deceased judgment debtor would be under a legal obligation to discharge their duties to satisfy the decree or an order from the estate of a deceased.

But in the case of sole proprietorship, which is a common form of business in India, when a legal obligation arises under a contract which has to be discharged personally by the sole proprietor, who is since deceased, had entered into the agreement, such as, in the case of a Development Agreement in the instant case, can such obligations be imposed on his legal representatives or heirs who are not parties to the Development Agreement and where the obligations under such an agreement *per se* cannot be fulfilled inasmuch as they neither have the skills nor the expertise to do so and those obligations depend purely on the skills and expertise of the deceased sole proprietor? In other words, where the decree or order is not against the estate of a deceased sole proprietor but based on the skills and expertise of the sole proprietor, we are of the view that in the latter case, the obligations which had to be performed by the sole proprietor would come to an end on his demise and the same cannot be imposed on his legal heirs or representatives. We reiterate that such a position is distinguished from a position where the estate of the deceased sole proprietor would become liable to satisfy the decree in monetary terms. This is because a proprietorship firm is not a separate legal entity as compared to the proprietor and his estate would become liable only to satisfy a decree or an order in monetary terms on his demise.

In this context, the following terms of the Development Agreement dated 30.07.1996 would clearly indicate that the obligations on the opposite party were to be carried out personally by him:

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**“NOW THIS AGREEMENT WINESSETH AND IS
AGREED BY AND BETWEEN THE PARTIES HERETO
AS FOLLOWS:**

1.1 The owners hereby grant to the developer sole and exclusive development rights in respect of the property bearing C.S. No. C. 1465 situated in ‘C’ Ward, Laxmipuri Kolhapur -416002 in the form of license to enter upon the said property in the capacity of the licensee of the owners for the sole purpose of developing the said property and selling the offices/premises / shops to the extent and in the manner stipulated hereafter and upon the terms and conditions agreed by the between the parties hereto and set out here below in this agreement. Subject to clause No. 2. the license hereby granted is irrevocable till the entire property is developed and all the premises constructed thereon are sold out. It is however, hereby expressly understood that the right of entry granted under this clause is for the sole purpose of developing the said property selling all premises (except those to be allotted to owners) including the shop/s basement/offices therein and common restricted areas or facilities as the case may be and such entry shall not be construed to mean that the owners have placed the developer in legal or physical possession of the said property.

X X X

16. The developer undertakes to comply with and carry out all the legal and contractual obligations that may be entered into for the construction of the buildings and for the sale of the various premises in the said buildings. The developer further undertakes to indemnify and keep indemnified the owners from and against any action either civil or criminal suit proceedings, damages, penalties or any other similar actions which may be initiated, made or lodged by any person or persons by reason of the failure of the developer to comply with, carry out or perform any such legal and contractual obligations.”

25. In this regard, it would be useful to illustrate that in a general sense, an injunction is a judicial mandate operating *in personam* by which

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upon certain established principles of equity, a party is required to do or refrain from doing a particular thing. On the other hand, a direction to pay money either by way of final or interim order is not considered to be an injunction. An order of injunction is normally issued against a named person and is addressed to the defendant personally and on his demise the cause of action would come to an end insofar as such a person who is since deceased even if it relates to a proprietary right unless his legal representatives are also causing a threat in which case the cause of action would continue *vis-à-vis* the legal representatives also.

26. Therefore, if the estate of the deceased becomes liable then the legal representatives who in law represent the estate of a deceased person or any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued is liable to the extent the estate has devolved. Hence, what is crucial is that the estate of a deceased person which becomes liable and the legal representatives must discharge their liability to a decree holder or a person who has been granted an order to recover from the estate of the deceased which they would represent and not beyond it.
27. But in the case of a personal obligation imposed on a person under the contract and on the demise of such person, his estate does not become liable and therefore, the legal representatives who represent the estate of a deceased would obviously not be liable and cannot be directed to discharge the contractual obligations of the deceased.
28. In ***Ajmera Housing Corporation vs. Amrit M. Patel (Dead) through LRs, (1998) 6 SCC 500***, this Court observed that the defendants in the said case had no privity of contract with the plaintiff therein and the contract had been entered into on the basis of the skills and capacity of the party to perform under the contract and the rights and duties were also personal to the party who had to discharge the obligations under the contract. In the circumstances, it was observed that the legal representatives of the builder under the contract had neither the capacity nor the special skills to discharge the obligations of the deceased.
29. This position is also clear on a reading of Section 50 of the CPC which states as under:

**Vinayak Purshottam Dube (Deceased), Through Lrs
v. Jayashree Padamkar Bhat & Others**

“Section.50:- (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.”

30. Thus, any decree which is relatable to the extent of the property of the deceased which has come to the hands of the legal representatives and has not been duly disposed of, the same would be liable for execution by a decree holder so as to compel the legal representatives to satisfy the decree. In this context, even a decree for preventive injunction can also be executed against the legal representatives of the deceased judgment-debtor if such a decree is in relation to the property or runs with the property if there is a threat from such legal representatives.
31. In view of the aforesaid discussion, we hold that the legal representatives of the deceased opposite party-appellants herein are not liable to discharge the obligation which had to be discharged by the deceased opposite party in his personal capacity and hence that portion of the impugned orders of the NCDRC, State Commission and District Forum are set aside. Needless to observe that the direction for payments shall be made by the legal representatives from the estate of the deceased opposite party if not already satisfied.
32. The appeals are allowed in the aforesaid terms.
33. Parties to bear their respective costs.