

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.9167 OF 2013
ALONGWITH
CIVIL APPLICATION NO.1147 OF 2014
ALONGWITH
CIVIL APPLICATION NO.1148 OF 2014**

Smt. Kitty Lobo (Since deceased deleted)

Neil James Lobo and others

.. Petitioners

Versus

Smt. Pooja Manhas and another

.. Respondents

Mr. D. A. Joseph i/by M/s. David & Associates, for the Petitioners.

Mr. A. H. Singh, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 16th NOVEMBER, 2015

PC.

1. The order dated 18.07.2013 passed by the Learned Judge of the Small Causes Court, Mumbai, partly allowing the application Exh.90 filed by the Defendant No.2 is taken exception to by way of the above Petition. The operative part of the said order reads thus :-

“1. Application is partly allowed on payment of costs of Rs.1000/-.

2. The order dt. 07/11/2012 passed against the defendant No.1 in respect of closing evidence of defendant No.1 is set-aside. The remaining prayer of defendant No.1

to allow her to file written statement will be decided while deciding application Exhibit-90.

3. The defendant No.1 shall pay costs of Rs.1000/- imposed as per this Court as well as costs of Rs.200/- imposed as per Order dt. 03/10/2011 to the plaintiffs or deposit in Court by end of this month. If, she fails to pay costs amount to the Plaintiffs or to deposit costs amount in the Court as per Order of this Court, then Order passed in favour of defendant No.1 will automatically stands cancelled.”

2. It appears that pending the above Petition, the Defendant No.1 Smt. Pooja Manhas has expired and the Petitioners have filed Civil Application No.1148 of 2014 for being exempted from bringing the heirs of the Defendant No.1 on record on the ground that the Defendant No.1 was a gratuitous licensee and therefore, the right to sue does not survive to her heirs. As the impugned order discloses the order closing the evidence of the Defendant No.1 has been set aside, and the prayer of the Defendant No.1 to allow her to file a written statement was to be decided while deciding application Exh.90. In view of the death of the Defendant No.1 pending the above Petition and in view of the contentious issue between the parties as regards whether the heirs of the Defendant No.1 are to be brought on record, it is not necessary for this Court to go into the said aspect as the suit in question is pending. In view of the death of the Defendant No.1 the application in so far as the filing of the written statement on behalf of the Defendant No.1 is concerned, has turned

infructuous. No written statement can now be filed by the Defendant No.1. If the parties i.e. the Petitioners and the Respondents are joining issue as regards whether the heirs of the Defendant No.1 to be brought on record, it is for them to file appropriate applications before the Trial Court i.e. for the Plaintiffs to file an application for being exempted from bringing the heirs of the Defendant No.1 on record or for the heirs of the Defendant No.1 to file an application to bring themselves on record. If any such applications are filed, needless to state that the same would be considered by the Trial Court on their own merits and in accordance with law and the fact that the instant Petition has been disposed of by this Court would not in any manner influence the Trial Court in deciding the said applications. The contentions of the parties in that regard are kept open for being urged before the Trial Court. It would be contingent upon the decision in such applications that would be filed by the parties that the entitlement of the heirs of the Defendant No.1 to put up their defence in the suit would arise and not otherwise. Hence, by observing as above, the Writ Petition is disposed of. The Civil Application Nos.1147 of 2014 and 1148 of 2014 to accordingly stand disposed of.

[R.M. SAVANT, J]