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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.89 OF 2015
IN
CIVIL REVISION APPLICATION NO.738 OF 2013**

Dr. Mrs. Cinthia Pinto .. Applicant
V/s.
Akbar Hussein Abdul Aziz
and ors .. Respondents.

Mr. S.E. Bharucha i/by Mr.Ravi Thankarajan,
for the applicant.
none for the Respondent

CORAM : K. R. SHRIRAM, J.

DATE : 28st January, 2015.

P.C.

This application is taken out on behalf of the petitioners/original plaintiffs to exempt the applicant from substituting and bringing on record the legal representatives of defendants/respondent Nos 2 to 4 as provided under Order XXII Rule 4 of the Code of Civil Procedure. The other respondents though served are not present today.

2. Order XXII of Rule 4 provides the procedure in case of death of one of several defendants. It provides that when the defendant dies and right to sue survives, the Court on an application made in that behalf shall cause the legal representatives of the deceased defendant to be made party and shall proceed with the suit. Sub rule 4 of Rule 4 of Order XXII, provides that whenever the Court thinks fit, it may exempt the plaintiff from the necessity of substituting legal representatives of such defendants, who has failed to file written statement or who having filed it has failed to appear and contest the suit at the hearing and the judgment may in such case be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

3. In this case the applicants have filed

RAD suit in the year 1983 in the Small Causes Court at Bandra against original defendant Nos 1 to 4 and the suit was dismissed by an order dated 8th April, 2003. Against the said order applicants had preferred an appeal and the appeal was also dismissed by order dated 9th May, 2013. Against these orders of the trial Court and appellate Court, the applicants have preferred present Civil Revision Application

4. While dismissing the suit, the trial Judge in the judgment delivered on 8.4.2003, in paragraph No.3 has recorded as under, :

"3. The defendants after service with the writ of summons appeared and contested this suit by filing their written statement. However, the defendant No.4 has not filed their written statement on record. According to defendant No. 1, 2, 3, they denied that defendant No.1 had sublet the suit premises to defendant Nos 2 and 3. According to them defendant 2 & 3 are occupying the portion of the suit premises as guest of defendant No.1 without payment of rent or compensation. There is also one agreement dated 7th June, 1983 executed between defendant 1 & 2 in the form of paying guest and defendant No.2 had paid Rs.35,000/- towards security

deposit to the defendant No.1 to be refunded back without interest. They denied that the plaintiffs require the suit premises reasonably and bonafidely. They further denied that they had further parted with the possession of the suit premises to defendant No.4 during pendency of the suit".

(emphasis supplied)

5. In paragraph No.4, it is mentioned that the defendants after filing of the written statement remained absent. In the application it is stated that the applicant has attempted to serve notice of the Civil Revision Application upon respondent Nos 2 to 4 by Registered Post AD, but the packets were returned unserved with remark "unclaimed". It appears defendant Nos 2 to 4 have expired as stated in paragraph No.4 of the application. The original suit itself is for unlawfully subletting the suit premises to defendant Nos 2, 3 and 4, on the one part, the other ground being for bonafide requirement.

6. In view what is stated above, I see no

harm if the applicants are exempted from effecting substituted service upon legal representatives of deceased defendant Nos 2 to 4. The application, therefore is allowed in terms of prayer clause (a).

7. The Civil Revision Application to come up for hearing in due course.

(K. R. SHRIRAM, J.)