

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

**WRIT PETITION NO. 7437 OF 2014
WITH
CIVIL APPLICATION NO.1081 OF 2016 IN WP/7437/2014**

Mrs. Angela Venice George

Petitioner

Vs

1a) Mr Shamsuddin Hanif Shaikh
and Ors.

.. Respondents

Mr. K.K.Pandey, Advocate for the petitioner.

CORAM : R.G.KETKAR,J.
DATE : 15/06/2016

PC:

1. Heard Mr. K.K.Pandey, learned counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 7.5.2014 passed by the learned Judge, presiding over Court Room No.37, of the Court of Small Causes Court, Mumbai (Bandra Branch) below Exhibit-34 in R.A.E. Suit No.351/799 of 2001 as also the Judgment and order dated 9.7.2014 passed by the Appellate Bench of the Small Causes Court in Revision Application No.82 of 2014. By these orders, the Courts below dismissed the Application Exhibit-34 taken out by the petitioner for implending her as party defendant in the suit.

3. Mr. Pandey submitted that the petitioner's mother Ms Elizabeth Fernandez, since deceased, was a tenant of flat no.3,

2nd floor of the building known as 'Shaikh Manzil' situate at 26, Naupada Bandra (E), Mumbai (for short, 'suit premises'). Applicant is the daughter of said Elizabeth and is sister of respondent no.5 herein Lisbon Fernandes. The petitioner was residing with Ms Elizabeth Fernandes at the time of her death. In view of Section 7(15)(d)(i), the petitioner has become tenant of the suit premises.. As the petitioner has interest in the suit premises, she is a necessary party. Her presence is absolutely necessary for deciding the controversy between the parties. Mr. Pandey invited my attention to Ration card of the applicant which shows that she is residing in the suit premises, namely, flat no.3.

4. I have considered the submissions advanced by Mr Pandey. I have also perused the material on record. The Courts below have rejected the application after considering that the petitioner is residing in flat no.4 in the building where the suit premises is situate. Tenancy Agreement dated 1.2.1983 is executed in respect of flat no. 4. The learned trial Judge also considered the decision dated 14.10.2010 passed in R.A.E.Suit No.326/870 of 1998 filed by the plaintiffs in the present suit. The said suit was instituted by Abdul Raheman Nasir Shaikh against the petitioner herein seeking eviction from flat no.4 in the suit building. Suit was decreed. Appeal preferred by the petitioner, being Appeal No.12 of 2011, was disposed of on 23.8.2013 in view of the consent terms filed by the parties. It appears that the petitioner

herein withdrew the appeal. The consent terms recorded that the petitioner had surrendered her tenancy rights in respect of flat no.4 and handed over possession of flat no.4 to the landlord. The learned trial Judge also considered the voluminous material produced on record and came to the conclusion that the petitioner is not residing in flat no.3 which is the suit premises and was residing in flat no.4 as a tenant.

5. Aggrieved by this decision, the petitioner instituted Revision Application before the Appellate Bench of the Small Causes Courts. The Appellate Court considered the decision in R.A.E. Suit No.326/870 of 1998. In paragraph 11, it was observed that the said suit was decreed against the petitioner on the ground of acquisition of suitable alternate accommodation. It was held in that suit that the petitioner had acquired suitable alternate accommodation at flat no. 307, B Wind, Raheja Estate, Kulupwadi, Borivali (E), Mumbai -400066. The Appellate Court also considered Ration card which shows the address of flat no.4. The other document filed on record also shows that the petitioner is residing in flat no.4 of the suit building. The Appellate Court has also considered old Ration card which was standing in the name of Elizabeth. In that Ration card, the name of the petitioner was not shown as a family member. In fact, in that Ration card, name of the 5th respondent Lisbon is shown as member of the family.

6. In paragraph 13, the Appellate Court also considered tenancy agreement dated 1.2.1983 which was in respect of flat no.4. Thus, after considering the material on record, the Courts below concurrently held that the petitioner was not residing along with original tenant Elizabeth at the time of her death on 20.10.1994. In view thereof, I do not find that the courts below committed any error in dismissing the application. The petitioner was not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that on the basis of material on record, no reasonable person would have come to the conclusions arrived at by the courts below. In the light of the aforesaid discussion, I do not find that the petitioner has made out any case for invocation of powers under Article 227 of the Constitution of India. In the result, Petition fails and the same is dismissed.

7. In view of dismissal of the petition, Civil Application No. 1081 of 2016 for amending the writ petition does not survive and the same is disposed of.

(R.G.KETKAR, J.)