

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

**CIVIL APPLICATION NO.760 OF 2016
IN
WRIT PETITION NO.5502 OF 2014
WITH
CIVIL APPLICATION NO.762 OF 2016
IN
WRIT PETITION NO.5504 OF 2014**

**Smt. Nishi Jagdish Bhatia ..Applicant
Versus
Smt. Satinder Arora (since deceased) & Anr. ..Respondents**

**Shri. D. B. Savant for the Applicant in both the Civil Applications.
Shri. G. S. Godbole i/by Shri. Rajesh Singh for the Respondent/
original Petitioner.**

**CORAM : R. M. SAVANT, J.
DATE : 20th APRIL, 2017**

PC.

1 The above Civil Applications have been filed by the Applicant/original Respondent to the above Writ Petitions for the following relief :-

“(a) This Hon'ble Court be pleased to dismiss the Petition as become infructuous in view of death of the Original Petitioner, Satinder Arora and be pleased to vacate the interim stay granted on 30th June 2015 restraining the Applicant and Respondents No.1 to 5 in Writ Petition.”

As the prayer itself indicates the said relief is sought on the basis that the above Writ Petitions have become infructuous (meaning thereby have abated in view of the death of the original Petitioner Satinder Arora).

2 The Respondent No.2 herein who seems to be in unauthorized occupation of the suit premises had filed Civil Application No.761 of 2016 and Civil Application No.763 of 2016 in the above Writ Petitions respectively for being impleaded in place of the original Petitioner in view of her death. The said applications were founded on the averments made in paragraph 9 of the said Civil Applications, which for the sake of ready reference is reproduced hereinunder :-

“9 The Applicants state that however pending the aforesaid litigation, the Petitioner was seriously unwell and after extensive medicinal treatments, lastly on 16.12.2015 she passed away at the suit premises, leaving behind the Applicants as her sole legal Representative. The Applicants state that during lifetime of the Petitioner and even after her demise, the Applicants were in peaceful use, occupation, possession and enjoyment of the suit premises along with the Petitioner, and the said facts were well within the knowledge of the Landlords i.e. Respondents No.1 to 6. The Applicants state that during the lifetime and even after the demise of the deceased Petitioner, the Applicants are managing, looking after and intermeddling the estate of deceased Petitioner. The Applicants state that accordingly the Applicants are legal Representative of the deceased Petitioner as contemplated u/s. 2(11) of C.P.C. 1908 and hence entitled to come on record of the aforesaid Petition as provided under Order XII Rule 4 of the C.P.C. Hereto annexed and marked as EXHIBIT “A” is the copy of the Death Certificate of the deceased Petitioner.”

3 A Learned Single Judge of this Court (N. M. Jamdar, J) who heard the said Civil Applications found the averments bereft of any

particulars in the context of the fact that the Applicant was intending to bring himself on record as the legal representative of the original Petitioner. The Learned Judge rejected the Civil Applications by order dated 23.11.2016 and in the context of the present Civil Applications paragraphs 3 and 4 of the said order are material and are reproduced hereinunder :-

“3. In the application, following averments are made in respect of the claim of the Applicants.

9. The Applicants state that however pending the aforesaid litigation, the Petitioner was seriously unwell and after extensive medicinal treatments, lastly on 16/12/2015 she passed away at the suit premises, leaving behind the Applicants as her sole legal Representative. The Applicants state that during lifetime of the Petitioner and even after her demise, the Applicants were in peaceful use, occupation, possession and enjoyment of the suit premises along with the Petitioner, and the said facts were well within the knowledge of the Landlords i.e. Respondents No.1 to 6. The Applicants state that during the lifetime and even after the demise of the deceased Petitioner, the Applicants are managing, looking after and intermeddling the estate of deceased Petitioner. The Applicants state that accordingly the Applicants are legal Representative of the deceased Petitioner as contemplated u/s. 2(11) of C.P.C. 1908 and hence entitled to come on record of the aforesaid Petition as provided under Order XII Rule 4 of the C.P.C. Hereto annexed and marked as EXHIBIT “A” is the copy of the Death Certificate of the deceased Petitioner.

The perusal of the above paragraph shows that it is absolutely bereft of any particulars. The Applicant No.1 a practicing advocate and Applicant No. 2 is his wife. The learned counsel for the Applicant accepts that the Applicants are not related to the deceased petitioner. The learned counsel for the Respondent vehemently opposes the Applications and points out, and it is not disputed, that the Applicants No.1 is the brother of the advocate who represented the deceased Petitioner. This is indeed shocking and deplorable state of affairs.

4. Not only there is no right spelt out by the Applicants, there are no documents annexed to the application, neither any leave is sought to rely upon any specific documents. The request of the learned counsel for the Applicant to rely upon some documents, which is not part of record, cannot be permitted today when the civil application is filed on 14 March 2016. When the Applicants are not related to the deceased Petitioner and the Applicant No. 1 is the brother of the advocate who represented deceased Petitioner, heavy burden lay on the Applicant to indicate the nature of right in the property. There is absolutely no reason why these particulars are not mentioned. It is not the case that the applicants are rustic villagers. Applicant No. 1 is an advocate and is aware of the law of pleadings. The Respondent-landlord's struggle to get back the premises needed by the Respondent for bonafide requirement, cannot nullified in such a brazen manner.”

4 A reading of the said paragraphs therefore disclose that the Learned Judge found it appropriate to describe the conduct of the Applicant who is a practicing advocate and brother of the advocate who was representing the original Petitioner Satinder Arora as shocking and deplorable. The Learned Judge in paragraph 4 has further observed that

the Respondent/landlord's struggle to get back the premises cannot be nullified in such a brazen manner.

5 The hearing of the above Civil Application Nos.760 of 2016 and Civil Application No.762 of 2016 filed by the Applicant/original Respondent to the above Writ Petitions was deferred probably in view of the fact that the applications for impleadment were required to be considered by the Learned Judge. That is how the above Civil Application No.760 of 2016 and Civil Application No.762 of 2016 have now been listed. The facts as described in the order dated 23.11.2016 show the brazen and blatant attempt on the part of the Respondent i.e. Rahul Singh to usurp the suit premises thereby trying to nullify the decree which is in favour of the Respondent/landlord. This cannot be countenanced. The said order dated 23.11.2016 rejecting Civil Application No.761 of 2016 and Civil Application No.763 of 2016 passed by a Learned Single Judge of this Court was confirmed by the Apex Court by dismissing the SLPs filed by the Respondents being Nos.4852 and 4853 of 2017 by order dated 17.02.2017. The sequitur to the rejection of the Civil Application No.761 of 2016 and Civil Application No.763 of 2016 and the confirmation of the said order by the Apex Court, would be that the above Civil Application No.760 of 2016 and Civil Application No.762 of 2016 filed by the Respondents would have to be allowed and

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are accordingly allowed and made absolute in terms of prayer clause (a) of the Civil Applications. Resultantly, the Writ Petitions would stand disposed of as having abated. All interim orders would stand vacated. The Civil Applications are accordingly disposed of.

6 Since the Respondents, Mr. Rahul Singh and Mrs. Anita @ Ruchi Rahul Singh claim to be in possession, they would not deal with the suit premises in any manner whatsoever. The amount lying in deposit in this Court is permitted to be withdrawn by the Applicant i.e. Smt. Nishi Jagdish Bhatia on producing an authenticated copy of this order.

[R.M.SAVANT, J]